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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, March 13, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1170

[Doc. #AMS–DA–10–0089; DA–11–01]

RIN 0581–AD12

Dairy Product Mandatory Reporting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts changes to Agricultural Marketing Service (AMS) regulations as required by section 273(d) of the Agricultural Marketing Act of 1946 (the Act) as amended by the Mandatory Price Reporting Act of 2010. The amendment to the Act requires the Secretary of Agriculture (Secretary) to establish an electronic reporting system for certain manufacturers of dairy products to report sales information for a mandatory dairy product reporting program. The amendment further states that the Secretary shall publish the information obtained for the preceding week not later than 3 p.m. Eastern Time on Wednesday of each week.

DATES: This rule is effective April 1, 2012.

FOR FURTHER INFORMATION CONTACT: For information relevant to this final rule, contact Clifford M. Carman, Assistant to the Deputy Administrator, USDA/AMS/Dairy Programs, Office of the Deputy Administrator, STOP 0225—Room 2968, 1400 Independence Ave. SW., Washington, DC 20250–0225, *clifford.carman@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is a statutory requirement pursuant to the Agricultural Marketing Act of 1946 [7 U.S.C. 1621–1627, 1635–1638], as amended November 22, 2000, by Public Law 106–532, 114 Stat. 2541; May 13, 2002, by Public Law 107–171, 116 Stat. 207; and September 27, 2010, by Public Law 111–239, 124 Stat. 2502.

The proposed rule was published in the **Federal Register** on June 10, 2011 (76 FR 112), with comments to be submitted on or before August 9, 2011. The U.S. Department of Agriculture (USDA) has reviewed and considered all of the comments submitted in a timely manner for this final rule.

Background: The Dairy Product Mandatory Reporting Program, 7 CFR part 1170, was established on August 2, 2007, on an interim final basis (72 FR 36341). A final rule associated with implementation of the program (73 FR 34175) became effective June 22, 2008. The National Agricultural Statistics Service (NASS) has collected information for the program, and the Agricultural Marketing Service (AMS) has provided verification and enforcement functions for the program. NASS has published sales information for cheddar cheese, butter, dry whey, and nonfat dry milk (NFDM) on a weekly basis. NASS began publishing cheddar cheese sales information in 1997 and butter, nonfat dry milk (NFDM), and dry whey sales information in 1998. Information was collected on a voluntary basis before the Dairy Product Mandatory Reporting Program became effective. Any manufacturer that processes and markets less than 1 million pounds of the applicable dairy products per calendar year has been exempt from these reporting requirements.

AMS is responsible for verifying the sales information submitted by reporting entities to NASS. To verify information submitted, AMS visits larger entities that account for 80 percent of the yearly reported product volume, based on the previous year, of each specified dairy product at least once annually. AMS visits one-half of entities that account for the remaining 20 percent each year, visiting each such entity at least once every other year. During each visit, AMS reviews applicable sales transactions records for at least the 4 most recent weeks. In some cases, AMS may review sales records for up to 2 years. AMS verifies that sales transactions match the information reported to NASS and that there have been no applicable sales transactions that have not been reported to NASS. Noncompliance, appeals, and enforcement procedures are administered by AMS.

The Mandatory Price Reporting Act of 2010 (Pub. L. 111–239, Sept. 27, 2010) amended section 273(d) of the Act (7 U.S.C. 1637b) to require that the Secretary establish an electronic reporting system for manufacturers of dairy products to report certain market information for the mandatory dairy product reporting program. The amendment further states that the Secretary shall publish the information obtained under this section for the preceding week not later than 3 p.m. Eastern Time on Wednesday of each week. This final rule, in accordance with the Act, includes regulatory changes for implementing these provisions. This rule also transfers applicable data collection responsibilities from NASS to AMS and includes conforming changes.

AMS requested comments on the proposed rule. AMS has reviewed all comments received within the 60-day comment period and has considered these comments in developing this final rule.

Executive Order 12866

This final rule has been determined not to be significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget with respect to this Executive Order.

Executive Order 12988 Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The amendments contained in this final rule are not intended to have a retroactive effect.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this final rule on small entities and has determined that this rule would not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Small businesses in the dairy product manufacturing [1] industry have been defined by the Small Business Administration (SBA) as those processors employing not more than 500 employees. For purposes of determining a processor's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. According to U.S. Census Bureau Statistics of U.S. Businesses, there were 1,583 dairy manufacturing establishments in the United States in 2008. Of these businesses, 1,039 establishments had fewer than 500 employees, and 544 establishments had greater than 500 employees (U.S. Census Bureau, 2008 County Business Patterns, *http://www.census.gov/econ/susb/*).

The dairy manufacturing establishments included in U.S. Census Bureau statistics include manufacturers of all types of dairy products. The number of plants that produce butter, cheese, NFDM, and dry whey with the precise specifications included in the mandatory reporting requirements is much lower than this. Furthermore, those manufacturers that process and market less than 1 million pounds of the applicable dairy products annually are exempt from reporting sales data. NASS has conducted an annual validation survey that serves to determine which plants are required to report. In 2011, this survey included 181 plants. The annual cost for plants to complete this survey is estimated at approximately $9 per plant. AMS will continue to conduct the validation survey annually. For 2011 there were 94 dairy product plants subject to mandatory reporting of sales data. There are 51 reporting entities that report data for one or more plants. (Plant numbers and numbers of reporting entities have been updated from the 2010 numbers that were reported in the proposed rule.) Based upon company profile information available on the Internet, AMS estimates that almost half of the reporting entities are considered small businesses under the criteria established by the SBA.

AMS estimates that the annual cost per plant for reporting sales information for products included in the surveys will be approximately $586. (The change from $511 shown in the proposed rule is due to recognition of greater costs associated with plants that must report sales information for both 40-pound blocks and 500-pound barrel cheddar cheese.) The majority of reporting entities have already been submitting data to NASS through a secure Web-based application. Less than three plants have been regularly faxing their information, and it is believed that these plants do have Internet access. Therefore, there would be no significant start-up costs anticipated for the reporting entities as a result of implementing this final rule.

Under the current Dairy Product Mandatory Reporting Program, dairy manufacturers are required to maintain records for verification purposes for a 2-year period. This final rule makes no changes to this requirement. These records are maintained as part of the normal course of business. Thus, there is no additional burden or cost associated with the maintenance of these records. Therefore, in total, this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), reporting and recordkeeping requirements that are utilized to collect the information required by the Act have been reviewed by the Office of Management and Budget (OMB). OMB has assigned a reference number of 0581–0274.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Agricultural Marketing Act of 1946 as amended (the Act).

The Act requires each manufacturer to report to the Secretary information concerning the price, quantity, and moisture content (where applicable) of dairy products sold by the manufacturer. Dairy products reported include cheddar cheese, butter, dry whey, and NFDM. Dairy manufacturers report information for these products if the products meet certain product specifications.

The collection and reporting of sales information, as required by the Act, have been the responsibility of NASS. NASS has collected the information as part of the information collection package OMB 0535–0020. NASS has allowed manufacturers to submit information through a secure Web-based application, by email, or by fax. Manufacturers have been required to submit information to NASS by 12 noon on Wednesday on all applicable sales of products during the 7 days ending 12 midnight of the previous Saturday, local time of the plant or storage facility where the sales are made. NASS has compiled and aggregated the information reported by the reporting entities and has published the information each Friday morning. When a Federal holiday has fallen on a Tuesday or Wednesday, NASS has contacted manufacturers via email or phone concerning the applicable report deadline.

Manufacturers that process and market less than 1 million pounds of applicable dairy products annually are exempt from reporting requirements. Each year, dairy manufacturers have completed an Annual Validation Worksheet for NASS to determine which dairy manufacturers are exempt and to ascertain if valid information has been supplied.

The Mandatory Price Reporting Act of 2010 amended subsection 273(d), of the Act, requiring the Secretary to establish an electronic reporting system to collect certain information. Using this reporting system, AMS will publish, not later than 3 p.m. Eastern Time on Wednesday of each week, a report containing the preceding week's information. The information collection and reporting requirements have been the responsibility of NASS. Under this final rule, AMS will assume this responsibility. NASS will no longer collect price, quantity, or moisture content (where applicable) information for cheddar cheese, butter, NFDM, or dry whey, and NASS will no longer collect the associated annual validation information. The forms associated with this data collection will be removed from NASS collection package, OMB 0535–0020, and will be replaced by forms in AMS collection package, OMB 0581–0274.

Every effort has been made to minimize any unnecessary recordkeeping costs or requirements. The electronic submission forms will require the minimum information necessary to carry out the requirements of the program effectively, and their use is necessary to fulfill the intent of the Act. It is expected that no outside technical expertise will be needed. The forms are simple, easy to understand, and place as small a burden as possible on respondents.

To assist the industry in achieving compliance, educational and outreach sessions will be held prior to implementation. AMS will assist reporting entities in understanding requirements for submitting data through electronic means. In addition, AMS will beta test the electronic-submission technology before implementation, and all entities required to report will be encouraged to participate in the beta-testing program. Any feedback received during this

[1] North American Industry Classification System (NAICS) code 3115.

outreach and testing period will be used to correct technical problems.

Collecting the information will coincide with normal industry business practices. The timing and frequency of collecting information are intended to meet the needs of the program while minimizing the amount of work necessary to submit the required reports. The information to be collected by AMS is almost identical to the information that has been collected by NASS. While NASS has required either the total sales dollars or the dollars per pound in addition to the total pounds of products sold to be reported, AMS will require both the total sales dollars and the dollars per pound to be reported along with the total pounds of products sold in order to provide an additional validation check. NASS has permitted manufacturers to submit information through a secure web-based application, by email, or by fax. This final rule, however, requires manufacturers to submit information only by electronic means specified by AMS. AMS has specified that each manufacturer submit the information using a secure Internet connection that includes a user name and password. The requirement that reporting entities submit information electronically is in accordance with the Act.

The frequency of data collection will not change. Reporting entities have been required to report information to NASS on a weekly basis by 12 noon local time on Wednesday. This final rule requires reporting entities to report information to AMS on a weekly basis by 12 noon, local time of the reporting entities, on Tuesday. This change is necessary to allow AMS personnel time to review and compile data and to publish the information by 3 p.m. Eastern Time on Wednesday as required by the Act. If a Federal holiday falls on Monday through Wednesday of a particular week, the due date for report submission may be adjusted. Prior to the beginning of each calendar year, AMS shall inform reporting entities of the times and dates that reports are due.

The first date reporting entities shall provide information to AMS will be Tuesday, April 3, 2012, of sales data for the week ending Saturday, March 31, 2012. The first publication by AMS will be on Wednesday, April 4, 2012, by 3 p.m. Eastern Time. The last publication by NASS will be on March 30, 2012, of sales data through the week ending March 24, 2012.

Information collection requirements included in this final rule are listed below. There have been minor changes to the number of respondents compared to the proposed rule due to updated information and the separation of cheddar cheese surveys into two types: blocks and barrels.

(1) Dairy Products Sales, Cheddar Cheese, 40-Pound Blocks

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per week for each report submitted.

Respondents: Cheddar cheese manufacturers of 40-pound blocks. Each reporting entity may report for a single cheddar cheese plant or it may report for more than one cheddar cheese plant, depending upon how the business is structured.

Estimated Number of Respondents: 18.

Estimated Total Annual Burden on Respondents: 312 hours.

(2) Dairy Products Sales, Cheddar Cheese, 500-Pound Barrels

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per week for each report submitted.

Respondents: Cheddar cheese manufacturers of 500-pound barrels. Each reporting entity may report for a single cheddar cheese plant or it may report for more than one cheddar cheese plant, depending upon how the business is structured.

Estimated Number of Respondents: 14.

Estimated Total Annual Burden on Respondents: 243 hours.

(3) Dairy Products Sales, Butter

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per week for each report submitted.

Respondents: Butter manufacturers. Each reporting entity may report for a single butter plant or it may report for more than one butter plant, depending upon how the business is structured.

Estimated Number of Respondents: 19.

Estimated Total Annual Burden on Respondents: 329 hours.

(4) Dairy Products Sales, Nonfat Dry Milk

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per week for each report submitted.

Respondents: NFDM manufacturers. Each reporting entity may report for a single NFDM plant or it may report for more than one NFDM plant, depending upon how the business is structured.

Estimated Number of Respondents: 28.

Estimated Total Annual Burden on Respondents: 485 hours.

(5) Dairy Products Sales, Dry Whey

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per week for each report submitted.

Respondents: Dry whey manufacturers. Each reporting entity may report for a single dry whey plant or it may report for more than one dry whey plant, depending upon how the business is structured.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden on Respondents: 347 hours.

(6) Annual Validation Survey

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per year for each report submitted.

Respondents: Dairy manufacturers. Each reporting entity may report for a single plant or it may report for more than one plant, depending upon how the business is structured.

Estimated Number of Respondents: 181.

Estimated Total Annual Burden on Respondents: 60 hours.

(7) Survey Follow-Up, Verification

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes for each contact from AMS.

Respondents: Dairy manufacturers. Each reporting entity may report for a single plant or it may report for more than one plant, depending upon how the business is structured.

Estimated Number of Respondents: 7 per week.

Estimated Total Annual Burden on Respondents: 30 hours.

Copies of this information collection and related instructions can be obtained without charge from Clifford M. Carman, Assistant to the Deputy Administrator, Dairy Programs, AMS, USDA, *clifford.carman@ams.usda.gov,* phone: (202) 690–2998.

Except as otherwise directed by the Secretary of Agriculture or the U.S. Attorney General for enforcement purposes, no officer, employee, or agent of the United States shall provide the public any information, statistics, or documents obtained from or submitted by any person under the Act that does not ensure preservation of confidentiality regarding the identity of persons, including parties to contracts and proprietary business information. All report forms include a statement that individual reports are kept confidential.

With respect to the application of the Privacy Act of 1974 (5 U.S.C. 552a) to

the maintenance of records required by the Act, the Dairy Products Sales survey population consists of dairy product manufacturers. Data collected by this survey relates to manufacturers' operations and transactions and not to those of individuals. Records maintained at business sites for verification of information that would be reported to AMS include contracts, agreements, receipts, and other materials related to sales of specific dairy products. No records about individuals would be maintained by AMS for this survey, and AMS believes that none would be part of these maintained business papers.

Discussion of Comments

The proposed rule solicited comments to be submitted to USDA on or before August 9, 2011. During this 60-day comment period, seven comment submissions were received: Three from dairy cooperative associations, two from cooperative federations, one from a dairy producer association, and one from a dairy manufacturer/processor trade association. Six of the commenters expressed overall support for the mandatory electronic reporting system and one commenter specifically expressed support for AMS to beta test the electronic submission technology.

Two commenters asked that AMS initiate a second rule and comment period so that the industry can address issues on product specifications, data collection, and publication. AMS will consider soliciting public comments through the **Federal Register** on related issues for mandatory reporting, such as product specifications.

One commenter stated that, although the Mandatory Price Reporting Act of 2010 sets timing for mandatory electronic reporting, they believe congressional authority exists for daily reporting, citing that the 2008 Farm Bill authorizes ''more frequent reporting.'' AMS considered this comment, however, the Act does not permit a requirement for reporting entities to report at any frequency other than weekly. Paragraph (b)(2)(C) of section 273 of the Act provides a condition that ''the frequency of the required reporting * * * does not exceed the frequency used to establish minimum prices for Class III or Class IV milk under a Federal milk marketing order.'' The Federal milk marketing orders establish minimum prices for Class III and Class IV milk based upon weekly dairy products prices reported (7 CFR 1000.50). Although the 2008 Farm Bill amended subsection (d) of section 273 of the Act to require more frequent reporting, subject to the availability of funds, the Mandatory Price Reporting Act of 2010 further amended the Act, deleting the requirement for more frequent reporting. One reporting entity specifically opposed any reporting period that is more frequent than weekly, citing time needed to receive warehouse bills of lading and preparation time for reporting information.

Three commenters expressed concern about the proposed change to move the weekly manufacturers' submission of reports from Wednesday 12 noon local time to Tuesday 12 noon local time, stating that this change would result in increased regulatory costs and increased revisions. AMS acknowledges that the change in reporting date by one day may cause manufacturers to change their methods of data collection and reporting, adding some additional reporting burden. However, AMS must publish sales reports by 3 p.m. Eastern Time on Wednesday whereas NASS has published sales reports on Friday morning. USDA, therefore, must change the weekly reporting day in order to complete validation checks and data analysis before weekly publication.

Three commenters had concerns about increased burdens and revisions for weeks that include an intervening holiday. AMS plans to allow reporting later in the week than Tuesday at noon when holidays intervene with reporting dates. USDA will provide the public an annual reporting schedule prior to the beginning of each calendar year.

One commenter requested that reporting flexibility be extended to accommodate situations that arise outside the control of the reporting facility. Barring any unforeseen circumstances which would make timely reporting impossible (such as an extreme natural disaster), AMS plans to hold the Tuesday noon submission deadline steadfast each week (other than a week with an intervening holiday). This will facilitate AMS in fulfilling its obligation to report by Wednesday at 3 p.m. Eastern Time each week (other than a week with an intervening holiday).

One commenter asked for guidance on how revisions would be submitted with the new electronic reporting system. Although revision procedures are not specifically spelled out in this rule, AMS will provide instructions for reporting requirements, including reporting of revisions, to all parties that must report. These instructions will be available to respondents during the reporting process. In addition, the procedures will be covered in educational and outreach sessions that will be provided to respondents prior to implementation of the amendments.

One commenter encouraged AMS to provide weekly notices to dairy manufacturers reminding them of the reporting deadlines for the following week. AMS does not plan to send weekly reminders concerning the due dates of reports. This final rule states that a schedule shall be provided to reporting entities prior to the beginning of each calendar year; AMS plans to post the scheduled reporting due dates on the Internet. This does not preclude AMS from providing other reminders to reporting entities throughout the year, such as for weeks with upcoming holidays.

Two commenters requested that reporting requirements be expanded beyond the current four commodities: Cheddar cheese, butter, nonfat dry milk, and dry whey. One commenter asked for reporting requirements to include yogurt, sour cream, cottage cheese, and other types of cheeses with a large sales volume. Another commenter asked that other products be added to the reporting list, including mozzarella (low or high moisture), Monterey Jack, Grade A Swiss, skim milk powder, buttermilk powder, whole milk powder, whey protein concentrate, and soft products or spot cream. The Act does not permit expanding the list of mandatory reported commodities beyond the four products historically reported. Paragraph (b)(2) of section 273 of the Act provides a condition that ''the information * * * is required only to the extent that the information is actually used to establish minimum prices for Class III or Class IV milk under a Federal milk marketing order.'' The Federal milk marketing orders establish minimum prices for Class III and Class IV milk based upon prices reported for butter, cheddar cheese, nonfat dry milk, and dry whey (7 CFR 1000.50).

One of the commenters requested that AMS expand the required reporting plants by reducing the 1 million pounds per year threshold to 500,000 pounds per year production or sales. Paragraph (b)(2)(D) of section 273 of the Act states, ''the Secretary may exempt from all reporting requirements any manufacturer that processes and markets less than 1,000,000 pounds of dairy products per year.'' The Act does not permit AMS to establish a reporting exemption threshold for manufacturers at any level other than 1 million pounds of dairy products processed and marketed per year.

One commenter asked that cheese committed for sale, but not yet sold (delivered), be designated as such for

mandatory storage reporting. Mandatory dairy product storage reporting is the responsibility of NASS, and this final rule makes no changes with respect to mandatory storage reporting.

AMS has made one change in this final rule from the proposed rule. The reporting requirements in § 1170.7(a) have been modified to indicate that reporting entities must report both the total sales dollars and dollars per pound for the applicable products. NASS has required either the total sales dollars or dollars per pound for the applicable products to be reported, and the proposed rule would have continued this requirement without change. However, the requirement to report both the total sales dollars and dollars per pound will provide AMS with a validation check to insure that, in each instance, the total sales dollars reported equals the dollars per pound times the reported quantity. Since this is a de minimus change in reporting burden, it has no effect on the estimated reporting burden for each survey.

List of Subjects in 7 CFR Part 1170

Dairy products, Reporting and recordkeeping requirements, Cheese, Butter, Dry whey, Nonfat dry milk.

Accordingly, 7 CFR part 1170 is amended as follows:

PART 1170—DAIRY PRODUCT MANDATORY REPORTING

■ 1. The authority citation for part 1170 is revised to read as follows:

Authority: 7 U.S.C. 1637–1637b, as amended by Pub. L. 106–532, 114 Stat. 2541; Pub. L. 107–171, 116 Stat. 207; and Pub. L. 111–239, 124 Stat. 2501.

■ 2. Revise § 1170.2 to read as follows:

§ 1170.2 Act.

Act means the Agricultural Marketing Act of 1946, 7 U.S.C. 1621 *et seq.,* as amended by the Dairy Market Enhancement Act of 2000, Pub. L. 106–532, 114 Stat. 2541; the Farm Security and Rural Investment Act of 2002, Pub. L. 107–171, 116 Stat. 207; and the Mandatory Price Reporting Act of 2010, Pub. L. 111–239, 124 Stat. 2501.

■ 3. Revise § 1170.7 to read as follows:

§ 1170.7 Reporting requirements.

(a) All dairy product manufacturers, with the exception of those who are exempt as described in § 1170.9, shall submit a report weekly to the Agricultural Marketing Service (AMS) by Tuesday, 12 noon local time of reporting entities, on all products sold as specified in § 1170.8 during the 7 days ending 12 midnight of the previous Saturday, local time of the plant or storage facility where the sales are made. If a Federal holiday falls on Monday through Wednesday of a particular week, the due date for report submission may be adjusted. Prior to the beginning of each calendar year, AMS shall release, to manufacturers that are required to report, the times and dates that reports are due. For the applicable products, the report shall be submitted by electronic means specified by AMS and shall indicate the name, address, plant location(s), quantities sold, total sales dollars, dollars per pound, and the moisture content where applicable. Each sale shall be reported for the time period when the transaction is completed, i.e. the product is ''shipped out'' and title transfer occurs. Each sale shall be reported either f.o.b. plant if the product is ''shipped out'' from the plant or f.o.b. storage facility location if the product is ''shipped out'' from a storage facility. In calculating the total dollars received and dollars per pound, the reporting entity shall neither add transportation charges incurred at the time the product is ''shipped out'' or after the product is ''shipped out'' nor deduct transportation charges incurred before the product is ''shipped out.'' In calculating the total dollars received and dollars per pound, the reporting entity shall not deduct brokerage fees or clearing charges paid by the manufacturer.

(b) Manufacturers or other persons storing dairy products are required to report, on a monthly basis, stocks of dairy products (as defined in § 1170.4) on hand, on the appropriate forms supplied by the National Agricultural Statistic Service. The report shall indicate the name, address, and stocks on hand at the end of the month for each storage location.

■ 4. Revise § 1170.8 (a)(3)(ii) to read as follows:

§ 1170.8 Price reporting specifications.

* * * * *

(a) * * *

(3) * * *

(ii) 500-pound barrels: Report weighted average moisture content of cheese sold. AMS will adjust price to a benchmark of 38.0 percent based on standard moisture adjustment formulas. Exclude cheese with moisture content exceeding 37.7 percent.

* * * * *

■ 5. Add § 1170.17 to read as follows:

§ 1170.17 Publication of statistical information.

Not later than 3 p.m. Eastern Time on the Wednesday of each week, AMS shall publish aggregated information obtained from manufacturers or other persons of all products sold as specified in § 1170.8. If a Federal holiday falls on Monday through Wednesday of a particular week, the due date for report publication may be adjusted. The public shall be notified of report times prior to the beginning of the calendar year.

Dated: February 9, 2012.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–3566 Filed 2–14–12; 8:45 am]

BILLING CODE 3410–02–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

[Docket No. CFPB–2011–0020]

RIN 3170–AA06

Home Mortgage Disclosure (Regulation C)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official commentary.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing a final rule amending the official commentary that interprets the requirements of Regulation C (Home Mortgage Disclosure) to reflect a change in the asset-size exemption threshold for depository institutions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). The exemption threshold has been adjusted to increase to $41 million from $40 million. The adjustment is based on the 3.43 percent increase in the average of the CPI–W for the twelve-month period ending in November 2011. Therefore, depository institutions with assets of $41 million or less as of December 31, 2011 are exempt from collecting data in 2012.

DATES: Effective February 15, 2012.

FOR FURTHER INFORMATION CONTACT: Jennifer Diamantis, Senior Counsel, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION: The Home Mortgage Disclosure Act of 1975, as amended (HMDA; 12 U.S.C. 2801 *et seq.*) requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must report those data to the appropriate federal agencies and make the data available to the public. The Bureau's Regulation C, 12 CFR part 1003, implements HMDA.

Prior to 1997, HMDA exempted depository institutions with assets

totaling $10 million or less, as of the preceding year-end. Provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 12 U.S.C. 2808(b), amended HMDA to expand the asset-size exemption for depository institutions. The statutory amendment increased the dollar amount of the asset-size exemption threshold by requiring a one-time adjustment of the $10 million figure based on the percentage by which the CPI–W for 1996 exceeded the CPI–W for 1975, and it provided for annual adjustments thereafter based on the annual percentage increase in the CPI–W, rounded to the nearest multiple of one million dollars.

The definition of ''financial institution'' in Regulation C provides that the Bureau will adjust the asset threshold based on the year-to-year change in the average of the CPI–W, not seasonally adjusted, for each twelve month period ending in November, rounded to the nearest million. 12 CFR 1003.2. For 2011, the threshold was $40 million. During the twelve-month period ending in November 2011, the CPI–W increased by 3.43 percent. As a result, the exemption threshold is increased to $41 million. Thus, depository institutions with assets of $41 million or less as of December 31, 2011 are exempt from collecting data in 2012. An institution's exemption from collecting data in 2012 does not affect its responsibility to report data it was required to collect in 2011.

Final Rule

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Comment 2(Financial institution)-2 is amended to update the exemption threshold. The amendment in this notice is technical and non-discretionary, and it merely applies the formula established by Regulation C for determining any adjustments to the exemption threshold. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

List of Subjects in 12 CFR Part 1003

Banks, Banking, Credit unions, Mortgages, National banks, Savings associations, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau of Consumer Financial Protection amends 12 CFR part 1003 as follows:

PART 1003—HOME MORTGAGE DISCLOSURE (REGULATION C)

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 12 U.S.C. 2803, 2804, 2805, 5512, 5581.

■ 2. In Appendix B to part 1003, Supplement I to part 1003, under *Section 1003.2—Definitions, Financial institution,* paragraph 2 is revised to read as follows:

Appendix B to Part 1003—Form and Instructions for Data Collection on Ethnicity, Race, and Sex

* * * * *

Supplement I to Part 1003—Staff Commentary

* * * * *

Section 1003.2—Definitions.

* * * * *

Financial institution.

* * * * *

2. *Adjustment of exemption threshold for depository institutions.* For data collection in 2012, the asset-size exemption threshold is $41 million. Depository institutions with assets at or below $41 million as of December 31, 2011 are exempt from collecting data for 2012.

* * * * *

Dated: February 3, 2012.

Richard Cordray,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2012–3460 Filed 2–14–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0453; Directorate Identifier 2008–SW–16–AD; Amendment 39–16942; AD 2012–03–01]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland Model EC135 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Eurocopter Deutschland (ECD) Model EC135 helicopters. This AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the aviation authority of the Federal Republic of Germany, with which we have a bilateral agreement, to identify and correct an unsafe condition. The MCAI AD states that in the past, the FADEC FAIL caution light illuminated on a few EC135 T1 helicopters. It states that this was caused by a discrepancy in the parameters that was generated within the fuel main metering unit and transmitted to the FADEC. This discrepancy led to the display of the FADEC FAIL caution light and ''freezing'' of the fuel main metering valve at its position, resulting in loss of the automatic engine control in the affected system. With the MCAI AD, a synchronization procedure for pilots, which was already used in the past, is being reintroduced, which prevents the parameter discrepancy arising and thus sustains the automatic engine control.

The AD actions are intended to prevent failure of the FADEC to automatically meter fuel, indicated by a FADEC FAIL cockpit caution light, and subsequent loss of control of the helicopter.

DATES: Effective March 21, 2012.

ADDRESSES: For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket:

You may examine the AD docket on the Internet at *http://www.regulations.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The AD docket contains this AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Eric Haight, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76137; telephone (817) 222–5204; email: *eric.haight@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On April 28, 2011, we issued a Notice of Proposed Rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the Eurocopter Deutschland (ECD) Model EC135 helicopters. That NPRM was published in the **Federal Register** on May 13, 2011, at 76 FR 27956. That NPRM proposed to reintroduce a synchronization procedure for pilots to prevent a parameter discrepancy from arising and sustain the automatic engine control.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM.

FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of the same type design, and that air safety and the public interest require adopting the AD requirements as proposed with the changes described previously and other minor editorial changes. These changes are consistent with the intent of the proposals in the NPRM and will not increase the economic burden on any operator nor increase the scope of the AD.

Differences Between This AD and the MCAI AD

We use a 50-hour time-in-service (TIS) compliance time rather than before further flight as used in the MCAI AD. Also, the MCAI AD states to follow the ASB and insert pages into the Rotorcraft Flight Manual (RFM). We did not follow the ASB, which requires the RFM information to be filed in the Section 4, Normal Procedures, of the RFM. To make compliance with the information mandatory, we are requiring that it be inserted into the Section 2, Limitations Section of the RFM.

Related Service Information

ECD has issued Alert Service Bulletin No. EC135–71A–024, dated August 6, 2002 (ASB). The ASB contains copies of special information to be inserted into the RFM for synchronizing fuel control components for sustaining automatic engine control. The ASB specifies making copies of the RFM pages contained in the ASB, cutting them out, and filing them in the RFM. The actions described in the MCAI AD are intended to correct the same unsafe condition as that identified in this service information.

Costs of Compliance

We estimate that this AD will affect about 20 helicopters of U.S. registry. We also estimate that it will take about a half work-hour to copy and insert the synchronization procedure into the RFM. The average labor rate is $85 per hour. We estimate the cost of the AD on U.S. operators to be $850.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska to the extent that a regulatory distinction is required; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA will amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2012–03–01 Eurocopter Deutschland: Amendment 39–16942. Docket No. FAA–2011–0453; Directorate Identifier 2008–SW–16–AD.

(a) Applicability

This AD applies to Model EC135 helicopters with Turbomeca Arrius 2B or 2B1 engines installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a discrepancy generated within the fuel main metering unit and transmitted to the FADEC, which could lead to the display of the FADEC FAIL caution light and ''freezing'' of the fuel main metering valve at its position. This condition could result in loss of the automatic engine control.

(c) Effective Date

This AD is effective March 21, 2012.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 50 hours time-in-service (TIS), either insert the following procedure by making pen-and-ink changes to the Rotorcraft Flight Manual (RFM) or by inserting a copy of this AD into the Limitations Section of the RFM.

SPECIAL INFORMATION FOR OEI/AUTOROTATION TRAINING AND APPROACH/LANDING PREPARATION

In order to prevent a malfunction, which could lead to a FADEC FAIL indication, the following procedure is mandatory:

The procedure shown below must be performed while in a steady flight condition and at a safe altitude:

—Before initiation of every approach (with or without landing)

—During training of OEI or Autorotation before every switch-over to IDLE

CAUTION: DURING THE RESET PROCEDURE DESCRIBED IN THE FOLLOWING, NO INPUTS ARE TO BE MADE TO THE COLLECTIVE LEVER OR TO THE TWIST GRIP FOR MANUAL ENGINE CONTROL, SINCE THIS CAN LEAD TO AN INEFFECTIVE SYNCHRONIZATION.

The reset procedure is identical for each of two systems and is to be applied for both engines, one after the other.

Procedure

1. ENG MODE SEL switch—Set from NORM TO MAN

After illumination of the ENG MANUAL caution:

2. ENG MODE SEL switch—Set from MAN to NORM: ENG MANUAL caution must go off

Repeat procedure for second engine.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, Rotorcraft Directorate, FAA, may approve AMOCs for this AD. Send your proposal to: Eric Haight, Aviation Safety Engineer, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5204, email: *eric.haight@faa.gov.*

(2) For operations conducted under a Part 119 operating certificate or under Part 91, Subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) Eurocopter Alert Service Bulletin EC135–71A–024, dated August 6, 2008, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review copies of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in Luftfahrt-Bundesamt (Germany) AD No. 2002–333, dated September 16, 2002.

(h) Subject

Air Transport Association of America (ATA) Tracking Code: 7600, Engine Controls.

Issued in Fort Worth, Texas, on January 27, 2012.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–3184 Filed 2–14–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81–19–000]

Natural Gas Pipelines; Project Cost and Annual Limits

February 9, 2012.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.308(x)(1), the Director of the Office of Energy Projects (OEP) computes and publishes the project cost and annual limits for natural gas pipelines blanket construction certificates for each calendar year.

DATES: This final rule is effective February 15, 2012 and establishes cost limits applicable from January 1, 2012 through December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Richard Foley, Chief, Certificates Branch 1, Division of Pipeline Certificates, (202) 502–8955.

SUPPLEMENTARY INFORMATION:

Publication of Project Cost Limits Under Blanket Certificates

Docket No. RM81–19–000

Order of the Director, OEP

February 9, 2012.

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the ''limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GDP implicit price deflator' published by the Department of Commerce for the previous calendar year.''

Pursuant to § 375.308(x)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Energy Projects. The cost limits for calendar year 2012, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

Effective Date

This final rule is effective February 15. The provisions of 5 U.S.C. 804 regarding Congressional review of Final Rules does not apply to the Final Rule because the rule concerns agency procedure and practice and will not substantially affect the rights or obligations of non-agency parties. The Final Rule merely updates amounts published in the Code of Federal Regulations to reflect the Department of Commerce's latest annual determination of the Gross Domestic Product (GDP) implicit price deflator, a mathematical updating required by the Commission's existing regulations.

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

Jeff C. Wright,

Director, Office of Energy Projects.

Accordingly, 18 CFR part 157 is amended as follows:

PART 157—[AMENDED]

■ 1. The authority citation for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 2. Table I in § 157.208(d) is revised to read as follows:

§ 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.

* * * * *

(d) * * *

TABLE I

Year	Limit	
	Auto. proj. cost limit (Col. 1)	Prior notice proj. cost limit (Col. 2)
1982 ..	$4,200,000	$12,000,000
1983 ..	4,500,000	12,800,000
1984 ..	4,700,000	13,300,000
1985 ..	4,900,000	13,800,000
1986 ..	5,100,000	14,300,000
1987 ..	5,200,000	14,700,000
1988 ..	5,400,000	15,100,000
1989 ..	5,600,000	15,600,000
1990 ..	5,800,000	16,000,000
1991 ..	6,000,000	16,700,000
1992 ..	6,200,000	17,300,000
1993 ..	6,400,000	17,700,000
1994 ..	6,600,000	18,100,000
1995 ..	6,700,000	18,400,000
1996 ..	6,900,000	18,800,000
1997 ..	7,000,000	19,200,000
1998 ..	7,100,000	19,600,000
1999 ..	7,200,000	19,800,000
2000 ..	7,300,000	20,200,000
2001 ..	7,400,000	20,600,000
2002 ..	7,500,000	21,000,000

TABLE I—Continued

Year	Limit	
	Auto. proj. cost limit (Col. 1)	Prior notice proj. cost limit (Col. 2)
2003 ..	7,600,000	21,200,000
2004 ..	7,800,000	21,600,000
2005 ..	8,000,000	22,000,000
2006 ..	9,600,000	27,400,000
2007 ..	9,900,000	28,200,000
2008 ..	10,200,000	29,000,000
2009 ..	10,400,000	29,600,000
2010 ..	10,500,000	29,900,000
2011 ..	10,600,000	30,200,000
2012 ..	10,800,000	30,800,000

* * * * *

■ 3. Table II in § 157.215(a)(5) is revised to read as follows:

§ 157.215 Underground storage testing and development.

(a) * * *

(5) * * *

TABLE II

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000
1988	3,400,000
1989	3,500,000
1990	3,600,000
1991	3,800,000
1992	3,900,000
1993	4,000,000
1994	4,100,000
1995	4,200,000
1996	4,300,000
1997	4,400,000
1998	4,500,000
1999	4,550,000
2000	4,650,000
2001	4,750,000
2002	4,850,000
2003	4,900,000
2004	5,000,000
2005	5,100,000
2006	5,250,000
2007	5,400,000
2008	5,550,000
2009	5,600,000
2010	5,700,000
2011	5,750,000
2012	5,850,000

* * * * *

[FR Doc. 2012–3488 Filed 2–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 9578]

RIN 1545–BJ60

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AB44

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 147

[CMS–9992–F]

RIN 0938–AQ74

Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act

AGENCIES: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Final rules.

SUMMARY: These regulations finalize, without change, interim final regulations authorizing the exemption of group health plans and group health insurance coverage sponsored by certain religious employers from having to cover certain preventive health services under provisions of the Patient Protection and Affordable Care Act.

DATES: *Effective date.* These final regulations are effective on April 16, 2012.

Applicability dates. These final regulations generally apply to group health plans and group health insurance issuers on April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Amy Turner or Beth Baum, Employee Benefits Security Administration (EBSA), Department of Labor, at (202) 693–8335; Karen Levin, Internal Revenue Service, Department of the Treasury, at (202) 622–6080; Robert Imes, Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS), at (410) 786–1565.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers can be found on the CMS Web site (*http://cciio.cms.gov*), and on health reform can be found at *http://www.HealthCare.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010; the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, was enacted on March 30, 2010 (collectively, the Affordable Care Act). The Affordable Care Act reorganizes, amends, and adds to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and make them applicable to group health plans.

Section 2713 of the PHS Act, as added by the Affordable Care Act and incorporated into ERISA and the Code, requires that non-grandfathered group health plans and health insurance issuers offering group or individual health insurance coverage provide benefits for certain preventive health services without the imposition of cost sharing. These preventive health services include, with respect to women, preventive care and screening provided for in the comprehensive guidelines supported by the Health Resources and Services Administration (HRSA) that were issued on August 1, 2011 (HRSA Guidelines).[1] As relevant here, the HRSA Guidelines require coverage, without cost sharing, for ''[a]ll Food and Drug Administration [(FDA)] approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity,'' as prescribed by a provider. Except as discussed below, non-grandfathered group health plans and health insurance issuers are required to provide coverage consistent with the HRSA Guidelines, without cost sharing, in plan years (or,

[1] The HRSA Guidelines can be found at: *http://www.hrsa.gov/womensguidelines.*

in the individual market, policy years) beginning on or after August 1, 2012.[2] These guidelines were based on recommendations of the independent Institute of Medicine, which undertook a review of the evidence on women's preventive services.

The Departments of Health and Human Services, Labor, and the Treasury (the Departments) published interim final regulations implementing PHS Act section 2713 on July 19, 2010 (75 FR 41726). In the preamble to the interim final regulations, the Departments explained that HRSA was developing guidelines related to preventive care and screening for women that would be covered without cost sharing pursuant to PHS Act section 2713(a)(4), and that these guidelines were expected to be issued no later than August 1, 2011. Although comments on the anticipated guidelines were not requested in the interim final regulations, the Departments received considerable feedback regarding which preventive services for women should be covered without cost sharing. Some commenters, including some religiously-affiliated employers, recommended that these guidelines include contraceptive services among the recommended women's preventive services and that the attendant coverage requirement apply to all group health plans and health insurance issuers. Other commenters, however, recommended that group health plans sponsored by religiously-affiliated employers be allowed to exclude contraceptive services from coverage under their plans if the employers deem such services contrary to their religious tenets, noting that some group health plans sponsored by organizations with a religious objection to contraceptives currently contain such exclusions for that reason.

In response to these comments, the Departments amended the interim final regulations to provide HRSA with discretion to establish an exemption for group health plans established or maintained by certain religious employers (and any group health insurance coverage provided in connection with such plans) with respect to any requirement to cover contraceptive services that they would otherwise be required to cover without cost sharing consistent with the HRSA Guidelines. The amended interim final regulations were issued and effective on August 1, 2011.[3] The amended interim final regulations specified that, for purposes of this exemption, a religious employer is one that: (1) Has the inculcation of religious values as its purpose; (2) primarily employs persons who share its religious tenets; (3) primarily serves persons who share its religious tenets; and (4) is a non-profit organization described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Code. Section 6033(a)(3)(A)(i) and (iii) of the Code refers to churches, their integrated auxiliaries, and conventions or associations of churches, as well as to the exclusively religious activities of any religious order. In the HRSA Guidelines, HRSA exercised its discretion under the amended interim final regulations such that group health plans established and maintained by these religious employers (and any group health insurance coverage provided in connection with such plans) are not required to cover contraceptive services.

In the preamble to the amended interim final regulations, the Departments explained that it was appropriate that HRSA take into account the religious beliefs of certain religious employers where coverage of contraceptive services is concerned. The Departments noted that a religious exemption is consistent with the policies in some States that currently both require contraceptive services coverage under State law and provide for some type of religious exemption from their contraceptive services coverage requirement. Comments were requested on the amended interim final regulations, specifically with respect to the definition of religious employer, as well as alternative definitions.

II. Overview of the Public Comments on the Amended Interim Final Regulations

The Departments received over 200,000 responses to the request for comments on the amended interim final regulations. Commenters included concerned citizens, civil rights organizations, consumer groups, health care providers, health insurance issuers, sponsors of group health plans, religiously-affiliated charities, religiously-affiliated educational institutions, religiously-affiliated health care organizations, other religiously-affiliated organizations, secular organizations, sponsors of group health plans, women's religious orders, and women's rights organizations.

Some commenters recommended that the exemption for the group health plans of a limited group of religious organizations as formulated in the amended interim final regulations be maintained. Other commenters urged that the definition of religious employer be broadened so that more sponsors of group health plans would qualify for the exemption. Others urged that the exemption be rescinded in its entirety. The Departments summarize below the major issues raised in the comments that were received.

Some commenters supported the inclusion of contraceptive services in the HRSA Guidelines and urged that the religious employer exemption be rescinded in its entirety due to the importance of extending these benefits to as many women as possible. For example, one provider association commented that all group health plans and group health insurance issuers should offer the same benefits to plan participants, without a religious exemption for some plans, and that religious beliefs are more appropriately taken into account by individuals when making personal health care decisions. Others urged that the exemption be eliminated because making contraceptive services available to all women would satisfy a basic health care need and would significantly reduce long-term health care costs associated with unplanned pregnancies.

Some of the commenters supporting the elimination of the exemption argued that section 2713 of the PHS Act does not provide any explicit basis for exempting a subset of group health plans. One commenter asserted that Congress's incorporation of section 2713 of the PHS Act into ERISA and the Code indicates its intent to require coverage of recommended preventive services under section 2713 of the PHS Act in the broadest spectrum of group health plans possible.

Many commenters that opposed the exemption asked that, at a minimum, the Departments not expand the definition of religious employer. Alternatively, they asked that, if the Departments decided to base the relevant portion of the definition of religious employer on a Code section other than section 6033, the other portions of the definition of religious employer be retained to limit the exemption largely to houses of worship.

Some commenters urged the Departments not to modify the definition of religious employer. For example, some commenters asserted that the exemption is appropriately

[2] The interim final regulations published by the Departments on July 19, 2010, generally provide that plans and issuers must cover a newly recommended preventive service starting with the first plan year (or, in the individual market, policy year) that begins on or after the date that is one year after the date on which the new recommendation or guideline is issued. 26 CFR 54.9815–2713T(b)(1); 29 CFR 2590.715–2713(b)(1); 45 CFR 147.130(b)(1).

[3] The amendment to the interim final regulations was published on August 3, 2011, at 76 FR 46621.

targeted at houses of worship, rather than a larger set of religiously-affiliated organizations. Others argued that, while the exemption addresses legitimate religious concerns, its scope is already broader than necessary and should not be expanded.

Commenters opposing any exemption stated that, if the exemption were to be retained, clear notice should be provided to the affected plan participants that their group health plans do not include benefits for contraceptive services. In addition, they urged the Departments to monitor plans to ensure that the exemption is not claimed more broadly than permitted.

On the other hand, a number of comments asserted that the religious employer exemption is too narrow. These commenters included some religiously-affiliated educational institutions, health care organizations, and charities. Some of these commenters expressed concern that the exemption for religious employers will not allow them to continue their current exclusion of contraceptive services from coverage under their group health plans. Others expressed concerns about paying for such services and stated that doing so would be contrary to their religious beliefs.

Commenters also claimed that Federal laws, including the Affordable Care Act, have provided for conscience clauses and religious exemptions broader than that provided for in the amended interim final regulations. Some commenters asserted that the narrower scope of the exemption raises concerns under the First Amendment and the Religious Freedom Restoration Act.

Other commenters, however, disputed claims that the contraceptive coverage requirement infringes on rights protected by the First Amendment or the Religious Freedom Restoration Act. These commenters noted that the requirement is neutral and generally applicable. They also explained that the requirement does not substantially burden religious exercise and, in any event, serves compelling governmental interests and is the least restrictive means to achieve those interests.

Some religiously-affiliated employers warned that, if the definition of religious employer is not broadened, they could cease to offer health coverage to their employees in order to avoid having to offer coverage to which they object on religious grounds.

Commenters supporting a broadening of the definition of religious employer proposed a number of options, generally intended to expand the scope of the exemption to include religiously-affiliated educational institutions, health care organizations, and charities. In some instances, in place of the definition that was adopted in the amended interim final regulations, commenters suggested other State insurance law definitions of religious employer. In other instances, commenters referenced alternative standards, such as tying the exemption to the definition of ''church plan'' under section 414(e) of the Code or to status as a nonprofit organization under section 501(c)(3) of the Code.

III. Overview of the Final Regulations

In response to these comments, the Departments carefully considered whether to eliminate the religious employer exemption or to adopt an alternative definition of religious employer, including whether the exemption should be extended to a broader set of religiously-affiliated sponsors of group health plans and group health insurance coverage. For the reasons discussed below, the Departments are adopting the definition in the amended interim final regulations for purposes of these final regulations while also creating a temporary enforcement safe harbor, discussed below. During the temporary enforcement safe harbor, the Departments plan to develop and propose changes to these final regulations that would meet two goals—providing contraceptive coverage without cost-sharing to individuals who want it and accommodating non-exempted, non-profit organizations' religious objections to covering contraceptive services as also discussed below.

PHS Act section 2713 reflects a determination by Congress that coverage of recommended preventive services by non-grandfathered group health plans and health insurance issuers without cost sharing is necessary to achieve basic health care coverage for more Americans. Individuals are more likely to use preventive services if they do not have to satisfy cost sharing requirements (such as a copayment, coinsurance, or a deductible). Use of preventive services results in a healthier population and reduces health care costs by helping individuals avoid preventable conditions and receive treatment earlier.[4] Further, Congress, by amending the Affordable Care Act during the Senate debate to ensure that recommended preventive services for women are covered adequately by non-grandfathered group health plans and group health insurance coverage, recognized that women have unique health care needs and burdens. Such needs include contraceptive services.[5]

As documented in a report of the Institute of Medicine, ''Clinical Preventive Services for Women, Closing the Gaps,'' women experiencing an unintended pregnancy may not immediately be aware that they are pregnant, and thus delay prenatal care. They also may not be as motivated to discontinue behaviors that pose pregnancy-related risks (e.g., smoking, consumption of alcohol). Studies show a greater risk of preterm birth and low birth weight among unintended pregnancies compared with pregnancies that were planned.[6] Contraceptives also have medical benefits for women who are contraindicated for pregnancy, and there are demonstrated preventive health benefits from contraceptives relating to conditions other than pregnancy (e.g., treatment of menstrual disorders, acne, and pelvic pain).[7]

In addition, there are significant cost savings to employers from the coverage of contraceptives. A 2000 study estimated that it would cost employers 15 to17 percent more not to provide contraceptive coverage in employee health plans than to provide such coverage, after accounting for both the direct medical costs of pregnancy and the indirect costs such as employee absence and reduced productivity.[8] In fact, when contraceptive coverage was added to the Federal Employees Health Benefits Program, premiums did not increase because there was no resulting

[4] Inst. of Med., *Clinical Preventive Services for Women: Closing the Gaps,* Wash., DC: Nat'l Acad. Press, 2011, at p. 16.

[5] Inst. of Med., *Clinical Preventive Services for Women: Closing the Gaps,* Wash. DC: Nat'l Acad. Press, 2011, at p. 9; *see also* Sonfield, A., The Case for Insurance Coverage of Contraceptive Services and Supplies Without Cost Sharing, 14 *Guttmacher Pol'y Rev.* 10 (2011), available at *http://www.guttmacher.org/pubs/gpr/14/1/gpr140107.html.*

[6] Gipson, J.D., et al., The Effects of Unintended Pregnancy on Infant, Child and Parental Health: A Review of the Literature, *Studies on Family Planning,* 2008, 39(1):18–38.

[7] Inst. of Med., *Clinical Preventive Services for Women: Closing the Gaps,* Wash., DC: Nat'l Acad. Press, 2011, at p. 107.

[8] Testimony of Guttmacher Inst., submitted to the Comm. on Preventive Servs. for Women, Inst. of Med., Jan. 12, 2012, p. 11 citing Bonoan, R + Gonen, JS, ''Promoting Healthy Pregnancies: Counseling and Contraception as the First Step'', Washington Business Group on Health, Family Health in Brief, Issue No. 3. August 2000; *see also* Sonfield, A., The Case for Insurance Coverage of Contraceptive Services and Supplies without Cost Sharing, 14 *Guttmacher Pol'y Rev.* 10 (2011); Mavranezouli, I., Health Economics of Contraception, 23 *Best Practice & Res. Clinical Obstetrics & Gynaecology* 187–198 (2009); Trussell, J., et al., Cost Effectiveness of Contraceptives in the United States, 79 *Contraception* 5–14 (2009); Trussell, J., The Cost of Unintended Pregnancy in the United States, 75 *Contraception* 168–170 (2007).

health care cost increase.[9] Further, the cost savings of covering contraceptive services have already been recognized by States and also within the health insurance industry. Twenty-eight States now have laws requiring health insurance issuers to cover contraceptives. A 2002 study found that more than 89 percent of insured plans cover contraceptives.[10] A 2010 survey of employers revealed that 85 percent of large employers and 62 percent of small employers offered coverage of FDA-approved contraceptives.[11]

Furthermore, in directing non-grandfathered group health plans and health insurance issuers to cover preventive services and screenings for women described in HRSA-supported guidelines without cost sharing, Congress determined that both existing health coverage and existing preventive services recommendations often did not adequately serve the unique health needs of women. This disparity places women in the workforce at a disadvantage compared to their male co-workers. Researchers have shown that access to contraception improves the social and economic status of women.[12] Contraceptive coverage, by reducing the number of unintended and potentially unhealthy pregnancies, furthers the goal of eliminating this disparity by allowing women to achieve equal status as healthy and productive members of the job force. Research also shows that cost sharing can be a significant barrier to effective contraception.[13] As the Institute of Medicine noted, owing to reproductive and sex-specific conditions, women use preventive services more than men, generating significant out-of-pocket expenses for women.[14] The Departments aim to reduce these disparities by providing women broad access to preventive services, including contraceptive services.

The religious employer exemption in the final regulations does not undermine the overall benefits described above. A group health plan (and health insurance coverage provided in connection with such a plan) qualifies for the exemption if, among other qualifications, the plan is established and maintained by an employer that primarily employs persons who share the religious tenets of the organization. As such, the employees of employers availing themselves of the exemption would be less likely to use contraceptives even if contraceptives were covered under their health plans.

A broader exemption, as urged by some commenters, would lead to more employees having to pay out of pocket for contraceptive services, thus making it less likely that they would use contraceptives, which would undermine the benefits described above. Employers that do not primarily employ employees who share the religious tenets of the organization are more likely to employ individuals who have no religious objection to the use of contraceptive services and therefore are more likely to use contraceptives. Including these employers within the scope of the exemption would subject their employees to the religious views of the employer, limiting access to contraceptives, and thereby inhibiting the use of contraceptive services and the benefits of preventive care.

The Departments note that this religious exemption is intended solely for purposes of the contraceptive services coverage requirement pursuant to PHS Act section 2713 and the companion provisions of ERISA and the Code.

The Departments also note that some group health plans sponsored by employers that do not satisfy the definition of religious employer in these final regulations may be grandfathered health plans [15] and thus are not subject to any of the preventive services coverage requirements of section 2713 of the PHS Act, including the contraceptive coverage requirement.

With respect to certain non-exempted, non-profit organizations with religious objections to covering contraceptive services whose group health plans are not grandfathered health plans, guidance is being issued contemporaneous with these final regulations that provides a one-year safe harbor from enforcement by the Departments.

Before the end of the temporary enforcement safe harbor, the Departments will work with stakeholders to develop alternative ways of providing contraceptive coverage without cost sharing with respect to non-exempted, non-profit religious organizations with religious objections to such coverage. Specifically, the Departments plan to initiate a rulemaking to require issuers to offer insurance without contraception coverage to such an employer (or plan sponsor) and simultaneously to offer contraceptive coverage directly to the employer's plan participants (and their beneficiaries) who desire it, with no cost-sharing. Under this approach, the Departments will also require that, in this circumstance, there be no charge for the contraceptive coverage. Actuaries and experts have found that coverage of contraceptives is at least cost neutral when taking into account all costs and benefits in the health plan.[16] The Departments intend to develop policies to achieve the same goals for self-insured group health plans sponsored by non-exempted, non-profit religious organizations with religious objections to contraceptive coverage.

A future rulemaking would be informed by the existing practices of some issuers and religious organizations in the 28 States where contraception coverage requirements already exist, including Hawaii. There, State health insurance law requires issuers to offer plan participants in group health plans sponsored by religious employers that are exempt from the State contraception coverage requirement the option to purchase this coverage in a way that religious employers are not obligated to fund it. It is our understanding that, in practice, rather than charging employees a separate fee, some issuers in Hawaii offer this coverage to plan participants at no charge. The Departments will work with stakeholders to propose and

[9] Dailard, C., Special Analysis: The Cost of Contraceptive Insurance Coverage, *Guttmacher Rep. on Public Pol'y* (March 2003).

[10] Sonfield, A., et al., U.S. Insurance Coverage of Contraceptives and the Impact of Contraceptive Coverage Mandates, *Perspectives on Sexual and Reproductive Health* 36(2):72–79, 2002.

[11] Claxton, G., et al., *Employer Health Benefits: 2010 Annual Survey,* Menlo Park, Cal.: Kaiser Family Found. and Chi., Ill.: Health Research & Educ. Trust, 2010.

[12] Testimony of Guttmacher Inst., submitted to the Comm. on Preventive Servs. for Women, Inst. of Med., Jan. 12, 2012, p.6, citing Goldin C and Katz L, Career and marriage in the age of the pill, *American Economic Review,* 2000, 90(2):461–465; Goldin C and Katz LF, The power of the pill: oral contraceptives and women's career and marriage decisions, *Journal of Political Economy,* 2002, 110(4):730–770; and Bailey MJ, More power to the pill: the impact of contraceptive freedom on women's life cycle labor supply, *Quarterly Journal of Economics,* 2006, 121(1):289–320.

[13] Postlethwaite, D., et al., A Comparison of Contraceptive Procurement Pre- and Post-Benefit Change, 76 *Contraception* 360 (2007).

[14] Inst. of Med., *Clinical Preventive Services for Women: Closing the Gaps,* Wash., DC: Nat'l Acad. Press, 2011, p.19.

[15] See section 1251 of the Affordable Care Act and its implementing regulations at 26 CFR 54.9815–1251T; 29 CFR 2590.715–1251; 45 CFR 147.140.

[16] Bertko, John, F.S.A., M.A.A.A., Director of Special Initiatives and Pricing in the Center for Consumer Information and Insurance Oversight at the Centers for Medicare and Medicaid Services, Glied, Sherry, Ph.D., Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services (ASPE/HHS), Miller, Erin, MPH, (ASPE/HHS), Wilson, Lee, (ASPE/HHS), Simmons, Adelle, (ASPE/HHS), ''The Cost of Covering Contraceptives through Health Insurance,'' (9 February 2012), available at: *http://aspe.hhs.gov/health/reports/2012/contraceptives/ib.shtml.*

finalize this policy before the end of the temporary enforcement safe harbor.

Nothing in these final regulations precludes employers or others from expressing their opposition, if any, to the use of contraceptives, requires anyone to use contraceptives, or requires health care providers to prescribe contraceptives if doing so is against their religious beliefs. These final regulations do not undermine the important protections that exist under conscience clauses and other religious exemptions in other areas of Federal law. Conscience protections will continue to be respected and strongly enforced.

This approach is consistent with the First Amendment and Religious Freedom Restoration Act. The Supreme Court has held that the First Amendment right to free exercise of religion is not violated by a law that is not specifically targeted at religiously motivated conduct and that applies equally to conduct without regard to whether it is religiously motivated—a so-called neutral law of general applicability. The contraceptive coverage requirement is generally applicable and designed to serve the compelling public health and gender equity goals described above, and is in no way specially targeted at religion or religious practices. Likewise, this approach complies with the Religious Freedom Restoration Act, which generally requires a federal law to not substantially burden religious exercise, or, if it does substantially burden religious exercise, to be the least restrictive means to further a compelling government interest.

III. Economic Impact and Paperwork Burden

A. Executive Orders 13563 and 12866—Department of Labor and Department of Health and Human Services

Executive Orders 13563 and 12866, among other things, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13563 also states that where ''appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.'' These final regulations have been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, these final regulations have been reviewed by the Office of Management and Budget.

1. Need for Regulatory Action

As stated earlier in this preamble, the Departments previously issued amended interim final regulations authorizing an exemption for group health plans and health insurance coverage sponsored by certain religious employers from certain coverage requirements under PHS Act section 2713 (76 FR 46621, August 3, 2011). The Departments have determined that it is appropriate to finalize, without change, these amended interim final regulations authorizing the exemption of group health plans and health insurance coverage sponsored by certain religious employers from having to cover certain preventive health services under the Patient Protection and Affordable Care Act.

2. Anticipated Effects

The Departments expect that these final regulations will not result in any additional significant burden or costs to the affected entities.

B. Special Analyses—Department of the Treasury

For purposes of the Department of the Treasury, it has been determined that this Treasury decision is not a significant regulatory action for purposes of Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the APA (5 U.S.C. chapter 5) does not apply to these final regulations, and, because these regulations do not impose a collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

C. Paperwork Reduction Act

These final regulations are not subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) because they do not contain a ''collection of information'' as defined in 44 U.S.C. 3502(11).

IV. Statutory Authority

The Department of the Treasury final regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor final regulations are adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185c, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Public Law104–191, 110 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Public Law 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Public Law 111–148, 124 Stat. 119, as amended by Public Law 111–152, 124 Stat. 1029; Secretary of Labor's Order 3–2010, 75 FR 55354 (September 10, 2010).

The Department of Health and Human Services final regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 USC 300gg through 300gg-63, 300gg-91, and 300gg-92), as amended.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Part 147

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Chapter I

Accordingly, 26 CFR part 54 is amended as follows:

PART 54—PENSION EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 54 is amended by adding an entry for § 54.9815–2713 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Section 54.9815–2713 also issued under 26 U.S.C. 9833. * * *

■ **Par. 2.** Section 54.9815–2713T is amended in paragraph (a)(1)(iii) by removing ''; and'' and adding a period in its place, and by removing paragraph (a)(1)(iv).

■ **Par. 3.** Section 54.9815–2713 is added to read as follows:

§ 54.9815–2713 Coverage of preventive health services.

(a) *Services*—(1) *In general.* [Reserved]

(i) [Reserved]

(ii) [Reserved]

(iii) [Reserved]

(iv) With respect to women, to the extent not described in paragraph (a)(1)(i) of § 54.9815–2713T, preventive care and screenings provided for in binding comprehensive health plan coverage guidelines supported by the Health Resources and Services Administration and developed in accordance with 45 CFR 147.130(a)(1)(iv).

(2) *Office visits.* [Reserved]

(3) *Out-of-network providers.* [Reserved]

(4) *Reasonable medical management.* [Reserved]

(5) *Services not described.* [Reserved]

(b) *Timing.* [Reserved]

(c) *Recommendations not current.* [Reserved]

(d) *Effective/applicability date.* April 16, 2012.

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Chapter XXV

29 CFR part 2590 is amended as follows:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 1. The authority citation for part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185c, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Public Law 104–191, 110 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Public Law 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Public Law 111–148, 124 Stat. 119, as amended by Public Law 111–152, 124 Stat. 1029; Secretary of Labor's Order 3–2010, 75 FR 55354 (September 10, 2010).

■ 2. Accordingly, the amendment to the interim final rule with comment period amending 29 CFR 2590.715–2713(a)(1)(iv) which was published in the **Federal Register** at 76 FR 46621–46626 on August 3, 2011, is adopted as a final rule without change.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Subtitle A

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

■ 2. Accordingly, the amendment to the interim final rule with comment period amending 45 CFR 147.130(a)(1)(iv) which was published in the **Federal Register** at 76 FR 46621–46626 on August 3, 2011, is adopted as a final rule without change.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Approved: February 10, 2012.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

Signed this 10th day, of February 2012.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Dated: February 10, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: February 10, 2012.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2012–3547 Filed 2–10–12; 3:45 pm]

BILLING CODE 4120–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in March 2012. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective March 1, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*Klion.Catherine@pbgc.gov*), Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for March 2012.[1]

The March 2012 interest assumptions under the benefit payments regulation will be 1.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for February 2012, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during March 2012, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 221, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
221	3–1–12	4–1–12	1.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 221, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
221	3–1–12	4–1–12	1.25	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 8th day of February 2012.

Laricke Blanchard,

Deputy Director for Policy, Pension Benefit Guaranty Corporation.

[FR Doc. 2012–3540 Filed 2–14–12; 8:45 am]

BILLING CODE 7709–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0099; FRL–9337–3]

Aureobasidium pullulans Strains DSM 14940 and DSM 14941; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Aureobasidium pullulans* strains DSM 14940 and DSM 14941 in or on all food commodities when applied pre-harvest and used in accordance with good agricultural practices. Bio-ferm GmbH submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Aureobasidium pullulans* strains DSM 14940 and DSM 14941.

DATES: This regulation is effective February 15, 2012. Objections and requests for hearings must be received on or before April 16, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0099. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not made available via the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8077; email address: *cerrelli.susanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural

producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0099 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 16, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0099, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 10, 2010 (75 FR 11171) (FRL–8810–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 9F7623) by Bio-ferm GmbH, Konrad Lorenz Str. 20, Tulln, 3430, Austria. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Aureobasidium pullulans* strains DSM 14940 and DSM 14941. This notice referenced a summary of the petition prepared by the petitioner Bio-ferm GmbH, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *'' Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A. Overview of Aureobasidium Pullulans Strains DSM 14940 and DSM 14941

Aureobasidium pullulans is a ''yeast-like'' saprophytic fungus found in the phyllosphere of many plants, and it has been isolated from soil and aquatic environments (Refs. 1, 2, and 3). It is commonly isolated from healthy grape (Refs. 4 and 5) and apple (Ref. 6) plants, as well as other plants (Refs. 7, 8, 9, 10, and 11). Although associated with disease in some plants, the fungus generally is recognized as a saprobe, since it derives its nourishment from nonliving or decaying organic matter, and is only considered a weak pathogen or parasite of certain plants (Refs. 2 and 12). It is a known antagonist of several plant disease-causing organisms, and is an important producer of enzymes for biotechnological and industrial applications (Ref. 1).

Aureobasidium pullulans strains DSM 14940 and DSM 14941 were isolated from apple leaves and classified by the German Strain Collection for Microorganisms (DSMZ). Neither is a

mutant nor genetically modified strain and they are not closely related to toxigenic human pathogens. As discussed in Pesticide Petition (PP) 9F7623, product analysis data demonstrate that *Aureobasidium pullulans* strain DSM 14941 is closely related to strain DSM 14940. The two strains share many similar genetic and morphological characteristics. Bioferm GmbH has proposed to register two manufacturing-use pesticide products (MPs): ''*Aureobasidium pullulans* strain DSM 14941 Technical,'' and ''*Aureobasidium pullulans* strain DSM 14940 Technical.'' The active ingredient is 80% w/w (minimum of $\times 10^9$ colony forming units/grams (unit of measure for bacteria (cfu/g)) in each of the proposed technical products.

Bio-ferm GmbH has proposed to register two end-use products (EPs) containing equal parts of *Aureobasidium pullulans* strains DSM 14940 and DSM 14941: ''Blossom Protect'' will be applied to pome fruit only during the blossoming period to protect plants against bacterial fire blight, and ''Botector'' will be applied preharvest to grapes, pome fruit, stone fruit, and strawberries to protect these crops against fruit rot diseases caused by *Botrytis* sp., *Monilia* sp., *Penicillium* sp., *Nectria* sp., and *Pezicula* sp.

B. Microbial Pesticide Toxicology Data Requirements

The Agency has determined that, for preharvest uses, all mammalian toxicology data requirements submitted to support the petition to exempt residues of *Aureobasidium pullulans* strains DSM 14940 and DSM 14941 from the requirement of a tolerance have been fulfilled (Ref. 13).

The product analysis data demonstrated that *Aureobasidium pullulans* strain DSM 14941 is closely related to strain DSM 14940. Because the strains are closely related, the Agency has determined that the findings of the submitted acute toxicity/pathogenicity studies conducted only with strain DSM 14941 supported both strains, and those studies show no evidence of toxicity, or pathogenicity at the doses tested. In addition, both strains were tested in an acute subcutaneous injection toxicity/pathogenicity study in rats. The results of this study indicated that both strains were not toxic, infective, and/or pathogenic to the test animals. These findings were supported by the results of a study of the influence of temperature on the growth of the two *Aureobasidium pullulans* strains, which showed that growth of both strains does not occur at or above 35 °C. Since human body temperature is 37 °C, and based on the results from these studies as discussed in this unit the Agency concluded that neither strain would be toxic, infective and/or pathogenic in humans.

1. *Acute Oral Toxicity/Pathogenicity (Office of Chemical Safety and Pollution Prevention (OCSPP) Guideline 885.3050; Master Record Identification Number (MRID) No. 47899302.* Twenty-four rats were administered a single dose of *Aureobasidium pullulans* strain DSM 14941. Three animals of each sex were sacrificed on days 3, 7, and 14; the remaining animals were sacrificed at test end on day 21. Body tissues were examined for *Aureobasidium pullulans.* All samples of feces, blood, brain, lung, liver, kidney, spleen, stomach, and intestine were negative. The lymph nodes of one animal sacrificed on day 7 tested positive for the presence of *Aureobasidium pullulans* DSM 14941. These findings show a pattern of clearance with no *Aureobasidium pullulans* DSM 14941 detected by day 14. The results of this acceptable study demonstrated that *Aureobasidium pullulans* DSM 14941 was not toxic, infective, and/or pathogenic in rats, when dosed at 4×10^8 cfu/animal.

2. *Acute Pulmonary Toxicity/Pathogenicity (OCSPP Guideline 885.3150; MRID No. 47899303).* Male and female animals were exposed intratracheally with *Aureobasidium pullulans* strain DSM 14941 Technical (4×10^8 cfu/g). Interim sacrifices were made 3 hours post-dose and on study days 3, 7, and 14; the remaining animals were sacrificed at study end on day 21. There was no mortality, and, except on the day of dosing when the entire test material group showed reduced motor activity and dyspnea, all animals appeared normal throughout the study. Tissue samples were evaluated for *Aureobasidium pullulans* after sacrifice. The following tissues were negative for *Aureobasidium pullulans* at all time points: Feces, brain, kidney, and intestine. Blood samples were negative except for one male on day 0; lung samples were negative except for two males and two females on day 0; liver samples were negative except for three males on day 0; spleen samples were negative except for two males on day 0; lymph node samples were negative except for one animal on day 7, and stomach samples were negative except for two males on day 0. These findings show a pattern of clearance with no *Aureobasidium pullulans* DSM 14941 detected by day 14. The results of this acceptable study demonstrated that *Aureobasidium pullulans* DSM 14941 was not toxic, infective, and/or pathogenic in rat, when dosed at 0.8×10^8 cfu/animal.

3. *Acute Injection Toxicity/Pathogenicity (OCSPP Guideline 885.3200; MRID No. 47871807 and 47871808).* In an acute subcutaneous toxicity/pathogenicity study (MRID 47871807), male and female rats were injected with *Aureobasidium pullulans* strain DSM 14940 (2.36×10^{10} cfu/g) and DSM 14941 (1.5×10^{10} cfu/g). Interim sacrifices were made on days 3, 7, and 14; the remaining animals were sacrificed at test end on day 21. There were no deaths, and all animals appeared normal throughout the study except for edema or slight erythema at the injection site. Samples of the following tissues were negative for *Aureobasidium pullulans* at all time points: Feces, blood, brain, lung, liver, kidney, spleen, stomach, and intestine. Lymph node samples were negative except for one animal sacrificed on day 7. The study author suggested this was likely a post-mortem transmission. A pattern of clearance was observed in this study, with no *Aureobasidium pullulans* DSM 14941 or 14940 detected by day 14. The results of this acceptable study demonstrated that Aureobasidium pullulans strains DSMZ 14940 and DSMZ 14941 were not toxic, infective, and/or pathogenic in rats, when dosed at 1.95×10^7 or 1.12×10^7cfu/animal, respectively.

In a second acute subcutaneous toxicity/pathogenicity study (MRID 47871808), male and female rats were injected with *Aureobasidium pullulans* strain DSM 14941 (1.1×10^9 cfu/g). Interim sacrifices were made on days 1 and 7; the remaining animals were sacrificed at test end on day 21. There were no deaths, and all animals appeared normal throughout the study except for severe edema or slight erythema at the injection site. Samples of the following tissues were negative for *Aureobasidium pullulans* at all time points: Brain, lung, spleen, kidney, lymph nodes, blood and urine. The skin was positive for *Aureobasidium pullulans* in three males and three females from the test material group on day 1 and in two females of the same group on day 7. The liver of one male from the test material group was positive on day 1. The cecum contents were positive in one male and one female from the test material group on day 1 and in two females from the same group on day 7. These findings show a pattern of clearance with no *Aureobasidium pullulans* DSM 14941 detected by day 21. The results of this acceptable study demonstrated that *Aureobasidium pullulans* DSM 14941 was not toxic, infective, and/or

pathogenic in rats, when dosed at 1.6×10^7 cfu/animal.

4. *Acute Dermal Toxicity (OCSPP Guideline 870.1200; MRID 47869615).* In an acute dermal toxicity study, the shaved skin of 10 rats was dosed with 2,000 milligram/kilogram (mg/kg) Blossom Protect (7×10^9 cfu/g each of strains DSM 14940 and DSM 14941) for 24 hours. One male exhibited chromodacryorrhea from day 7 to day 14 and one female exhibited chromodacryorrhea from day 1 to day 2 of the study, but this was not considered to be toxicologically significant because this is a normal but rare response and it did not result in mortality. All animals appeared healthy at necropsy. The lethal dose (LD_{50}) was >2,000 mg/kg. This study was rated acceptable, and the end use product (EP) is classified as toxicity category IV.

5. *Primary Dermal Irritation (OCSPP Guideline 870.2500; MRID 47869619).* In a dermal irritation study, the shaved skin of 3 rabbits was dosed with 0.5 g Blossom Protect (7×10^9 cfu/g *Aureobasidium pullulans* strain DSM 14940 and 7×10^9 cfu/g *Aureobasidium pullulans* strain DSM 14941) moistened with 1.0 milliliter (mL) deionized water for 4 hours. All animals appeared normal throughout the study; thus, Blossom Protect was considered to be non-irritating. This study was rated acceptable, and the EP is classified as toxicity category IV.

6. *Acute Oral Toxicity (OCSPP Guideline 870.1100; MRID No. 47869614.* In an acute oral toxicity study, six animals received a single 2,000 mg/kg body weight (bw) dose of Blossom Protect 22% (2×10^{10} cfu/g) *Aureobasidium pullulans* strain DSM 14940, 22% (2×10^{10} cfu/g) *Aureobasidium pullulans* strain DSM 14941, 25% sucrose, 6% water. There was no mortality, and all animals appeared normal throughout the study. The LD_{50} was >2,000 mg/kg. This study was rated acceptable, and the EP is classified as toxicity category III.

7. *Acute Inhalation Toxicity (OCSPP Guideline 870.1300; MRID 47869617).* In an acute inhalation toxicity study, 10 animals were exposed nose-only to a 10% suspension of Blossom Protect (7×10^9 cfu/g *A. pullulans* strain DSM 14940 and 7×10^9 cfu/g *A. pullulans* strain DSM 14941) at 5.17 milligrams per liter (mg/L). The Mass Medium Aerodynamic Diameter (MMAD) was 4.2 µm. There were no deaths and all animals appeared healthy throughout the study. Necropsy was unremarkable. The lethal concentration (LC_{50}) was >5.17 mg/L. This study was rated acceptable, and the EP is classified as toxicity category IV.

8. *Acute Eye Irritation (OCSPP Guideline 870.2400; MRID 47869618).* In an eye irritation study, three rabbits were dosed with 0.1 mL (60–62 grams (g) of Blossom Protect (7×10^9 cfu/g *A. pullulans* strain DSM 14940 and 7×10^9 cfu/g *A. pullulans* strain DSM 14941). One animal had a score of 1 for conjunctival redness 1 hour after application. There were no other clinical signs, and all animals appeared normal at 24 hours. Blossom protect was considered to be virtually non-irritating. This study was rated acceptable, and the EP is classified as toxicity category IV.

9. *In vivo Micronucleus Assay (MRID 47899304).* Twenty mice (two groups of five male and two groups of five female mice) received single 2,000 mg/kg *Aureobasidium pullulans* strain DSM 14941 dissolved in water by oral gavage. There were no clinical signs observed in any of the test animals, which were sacrificed 24 or 48 hours after receiving the test material. The femoral bone marrow was immediately harvested, and the ratio of polychromatic erythrocytes to total erythrocytes (mature and immature) was determined, and 2,000 immature erythrocytes/animal were scored for the presence of micronucleated immature erythrocytes, a sign of potential toxicity or damage to genetic material in the cells. *Aureobasidium pullulans* strain DSM 14941 did not produce a statistically significant increase in micronucleated immature erythrocytes compared to the untreated control animals. The response of the positive control animals (treated with a known toxic substance, cyclophosphamide, by intraperitoneal injection, at 10 mg/kg) was appropriate for comparison and did produce a statistically significant increase in micronucleated immature erythrocytes compared to the untreated control animals. This study was rated acceptable.

10. *Influence of Temperature on Reproduction (MRID 47871833).* *Aureobasidium pullulans* strain CBS 626.85 was isolated from the peritoneal dialysis fluid of a human in Australia. The effects of temperature on the reproduction or growth of *Aureobasidium pullulans* strains DSM 14940 and, DSM 14941, in liquid culture or on agar plates were examined and compared against this positive control, *Aureobasidium pullulans* strain CBS 626.85, to observe the ability of these strains to reproduce at human body temperature of 37 °C. All three strains grew well at 30 °C. At 33 °C, the number of replications (per 48 hours) of the *Aureobasidium pullulans* strains DSM 14940 and, DSM 14941 was less than one, while the number of duplications for strain CBS 626.85 was approximately five. Neither strain DSM 14940 or strain DSM 14941 was able to grow at 35 °C or 37 °C, while strain CBS 625.85 replicated (approximately) twice at 35 °C and once at 37 °C. Based on the lack of growth of the DSM strains at 35 °C and above, and given human body temperature is 37 °C, *Aureobasidium pullulan* strains DSM 14940 and DSM 14941 are expected to be non-pathogenic in humans. This study was rated acceptable.

11. *Hypersensitivity Incidents (OCSPP Guideline 885.3400; MRID No. 47945023).* No hypersensitivity incidents, including immediate-type or delayed-type reactions of humans and domestic animals during research, development, or testing of *Aureobasidium pullulans* strains DSM 14940 and DSM 14941 were reported by the applicant. Any future hypersensitivity incidents must be reported per OCSPP Guideline 885.3400.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Should this microbial pesticide be present on food, the acute toxicity, infectivity, and pathogenicity data, as well as the data demonstrating the lack of growth at human body temperature submitted for *Aureobasidium pullulans* strains DSM 14940 and DSM 14941 demonstrated that no toxicity, infectivity, and/or pathogenicity is likely to occur with any exposure level resulting from application of these two proposed pesticide active ingredients in accordance with good agricultural practices (see Unit III.B.).

1. Food. Naturally occurring *Aureobasidium pullulans* is likely to be present on fresh produce. According to Webb and Mundt (1978) (Ref. 11) *Aureobasidium pullulans* is ''a major resident on most green plants.'' In a study with several species of crop plants, they determined *Aureobasidium pullulans* to be among the most abundant (71%–85%) of all fungi present on the plant surfaces. *Aureobasidium pullulans* made up an average of 77.1% of the mold species isolated on green beans, and occurred at

high levels (up to 2.7×10^4 cfu/centimeter^2 (cm^2) on certain fruits (cucumbers and squash). Dietary exposure to *Aureobasidium pullulans* strains DSM 14940 and DSM 14941, therefore, is possible from strawberries, grapes, pome and stone fruits harvested naturally and from plants treated with these fungicidal active ingredients. The submitted acute oral toxicity/pathogenicity studies indicated that if *Aureobasidium pullulans* strains DSM 14940 and DSM 14941 are ingested, no toxic or pathogenic effects will result. In addition, *Aureobasidium pullulans* strains DSM 14940 and DSM 14941 do not reproduce at the normal human body temperature of 37 °C. Therefore, in the event oral exposure should occur by ingesting treated fruits, the Agency concludes that there is a reasonable certainty that no harm will result from exposure to such residues.

2. Drinking water exposure. Naturally occurring *Aureobasidium pullulans* is ubiquitous and has been isolated from all types of water (Ref. 14). Exposure of humans to residues of pesticides containing *Aureobasidium pullulans* strains DSM 14940 and DSM 14941 in consumed drinking water is possible but potential exposure through drinking water is reduced, given the proposed use patterns, use sites, and application methods for *Aureobasidium pullulans* strains DSM 14940 and DSM 14941, which do not include direct application to aquatic environments. In the event that *Aureobasidium pullulans* strains DSM 14940 and DSM 14941 are transferred to surface water or ground water intended for human consumption, the fungi would not survive the high temperatures, chlorination, pH adjustments, and/or filtration water is subjected to in a drinking water treatment facility. Even if oral exposure should occur through consumed drinking water, there is a reasonable certainty that no harm will result from exposure to such residues, based upon the lack of toxicity, infectivity, and/or pathogenicity, as well as the inability of these fungal strains to grow at human body temperature, demonstrated in the previously described toxicological studies (see Unit III.B.).

B. Other Non-Occupational Exposure

The use sites for these products include residential garden sites and agricultural sites. *Aureobasidium pullulans* is naturally present in many habitats, and based on the data and other information submitted to satisfy data requirements for registration of the MPs and EPs containing the active ingredients *Aureobasidium pullulans* strains DSM 14940 and DSM 14941, no toxicity, infectivity, pathogenicity or other adverse effects from non-occupational exposure are expected (see Unit III.B.).

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

The likelihood of adverse cumulative effects occurring via a common mechanism of toxicity is minimal, based on the lack of toxicity/pathogenicity/infectivity potential of the active ingredients when *Aureobasidium pullulans* strains DSM 14940 and DSM 14941 are used in or on food commodities and/or labeled for residential uses (see Unit III.B.). In addition, *Aureobasidium pullulans* strains DSM 14940 and DSM 14941 do not appear to produce a toxic metabolite produced by other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor. In applying this provision, EPA either retains the default value of 10X or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Based on the acute toxicity and pathogenicity data summarized in Unit III.B., EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the residues of *Aureobasidium pullulans* strains DSM 14940 and DSM 14941. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has arrived at this conclusion because the data and information available on *Aureobasidium pullulans* strains DSM 14940 and DSM 14941 do not demonstrate toxic, pathogenic, and/or infective potential to mammals. Thus, there are no threshold effects of concern and, as a result, the Agency has concluded that an additional margin of safety for infants and children is unnecessary in this instance. Further, the need to consider consumption patterns, special susceptibility, and cumulative effects does not arise when dealing with pesticides with no demonstrated significant adverse effects.

VII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for *Aureobasidium pullulans* strains DSM 14940 or DSM 14941.

VIII. Conclusions

EPA concludes that there is a reasonable certainty that no harm will result to the United States population, including infants and children, from aggregate exposure to residues of

Aureobasidium pullulans strains DSM 14940 and DSM 14941. Therefore, an exemption from the requirement of a tolerance is established for residues of *Aureobasidium pullulans* strains DSM 14940 and DSM 14941 in or on all food commodities when applied as a preharvest fungicide and used in accordance with good agricultural practices.

IX. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

X. References

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XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 30, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1312 is added to subpart D to read as follows:

§ 180.1312 Aureobasidium pullulans strains DSM 14940 and DSM 14941; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the microbial pesticides, *Aureobasidium pullulans* strains DSM 14940 and DSM 14941 in or on all food commodities when applied preharvest and used in accordance with good agricultural practices.

[FR Doc. 2012–3585 Filed 2–14–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0807; FRL–9337–2]

Pasteuria nishizawae—Pn1; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of *Pasteuria nishizawae*—Pn1 in or on all food commodities when applied as a nematicide and used in accordance with good agricultural practices. Pasteuria Bioscience, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Pasteuria nishizawae*—Pn1 under the FFDCA.

DATES: This regulation is effective February 15, 2012. Objections and requests for hearings must be received on or before April 16, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0807. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jeannine Kausch, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8920; email address: *kausch.jeannine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0807 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 16, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0807, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of February 4, 2011 (76 FR 6465) (FRL–8858–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 0F7749) by Pasteuria Bioscience, Inc., 12085 Research Dr., Suite 185, Alachua, FL 32615. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Pasteuria nishizawae*—Pn1. This notice referenced a summary of the petition prepared by the petitioner, Pasteuria Bioscience, Inc., which is available in the docket via *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit VII.C.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *'' Additionally, section 408(b)(2)(D) of FFDCA requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] * * * residues and other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other

exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A. Overview of Pasteuria nishizawae—Pn1

Pasteuria, a genus of bacteria, includes several species that have shown potential in controlling plant-parasitic nematodes that attack and cause significant damage to many agricultural crops (see, e.g., the **Federal Register** of December 28, 1994 (59 FR 66740) (FRL–4923–4) and June 30, 2010 (75 FR 37734) (FRL–8831–9) for final rules that established tolerance exemptions for residues of the nematicides, *Pasteuria penetrans* (40 CFR 180.1135) and *Pasteuria usgae* (40 CFR 180.1290), respectively). These gram-positive, mycelial, endospore-forming bacteria are mostly obligate parasites (i.e., organisms that depend on particular hosts to complete their own life cycle) of plant-parasitic nematodes, although one *Pasteuria* species—*Pasteuria ramosa*—is known to parasitize *Daphnia* species, which are tiny crustaceans often called ''water fleas'' due to their flea-like size and appearance (Refs. 1 and 2). *Pasteuria* species are ubiquitous in most environments and are found in nematodes in at least 80 countries on 5 continents, as well as on islands in the Atlantic, Pacific, and Indian Oceans (Ref. 2). Higher population densities often occur in areas where there is an ample supply of nematode hosts (e.g., where crops susceptible to nematodes are cultivated) (Refs. 3, 4, and 5). *Pasteuria nishizawae*—Pn1 was specifically isolated from an Illinois soybean field in the mid-2000s (Ref. 1).

Although endospores of *Pasteuria nishizawae* have been observed to attach to the cuticle of 3 nematodes of the genus *Heterodera* and 1 nematode of the genus *Globodera,* it is known only to infect and complete its life cycle within the female soybean cyst nematode (*Heterodera glycines*) (Ref. 2). In the following manner, *Pasteuria nishizawae*—Pn1 exerts a pesticidal effect on the soybean cyst nematode through parasitism that ultimately results in the death of infected females:

1. Endospores attach to the cuticle of a juvenile soybean cyst nematode female.

2. Once a soybean cyst nematode female invades soybean roots, *Pasteuria nishizawae*—Pn1 produces a germ tube that penetrates the body of the nematode.

3. Primary and secondary microcolonies of *Pasteuria nishizawae*—Pn1 develop and proliferate within the body of the nematode, causing its death (Ref. 2).

In light of the demonstrated nematicidal capabilities and host specificity of *Pasteuria nishizawae*—Pn1, Pasteuria Bioscience, Inc. has proposed to register pesticide products that could be applied to soybean or its seed to control the soybean cyst nematode.

B. Microbial Pesticide Toxicology Data Requirements

All applicable mammalian toxicology data requirements supporting the request for an exemption from the requirement of a tolerance for residues of *Pasteuria nishizawae*—Pn1 in or on all food commodities have been fulfilled with data submitted by the petitioner. The results of the acute dermal toxicity and primary dermal irritation tests revealed no toxicity or irritation attributed to *Pasteuria nishizawae*—Pn1, and these studies received a Toxicity Category IV classification (see 40 CFR 156.62). Moreover, acute oral, pulmonary, and injection toxicity/pathogenicity tests indicated that *Pasteuria nishizawae*—Pn1 was not toxic and/or pathogenic via the tested routes of exposure. Although infectivity and clearance were not evaluated in any of the acute toxicity/pathogenicity tests, EPA believes that these endpoints are not a concern given the host specificity of *Pasteuria nishizawae* for the soybean cyst nematode (Refs. 1 and 2). Finally, the petitioner has reported that no hypersensitivity incidents occurred during development and testing of this bacterium. The overall conclusions from all toxicological information submitted by the petitioner are briefly described in this unit, while more in-depth synopses of some study results can be found in the associated Biopesticides Registration Action Document provided as a reference in Unit IX. (Ref. 6).

1. Acute oral toxicity/pathogenicity—rat (Harmonized Guideline 885.3050; Master Record Identification Number (MRID No.) 481517–09). A supplemental acute oral toxicity/pathogenicity study demonstrated that *Pasteuria nishizawae*—Pn1 was not toxic and/or pathogenic to laboratory rats when administered by oral gavage in a single dose of 1.6×10^9 spores per animal. Although clearance and infectivity were not measured, EPA believes these endpoints are not a concern given *Pasteuria nishizawae*—Pn1's well-established host specificity for the soybean cyst nematode (Refs. 1 and 2).

2. Acute pulmonary toxicity/pathogenicity—rat (Harmonized Guideline 885.3150; MRID No. 481517–10). A supplemental acute pulmonary toxicity/pathogenicity study demonstrated that *Pasteuria nishizawae*—Pn1 was not toxic and/or pathogenic to laboratory rats when administered by intratracheal instillation in a single dose of 1.6×10^8 spores per animal. Although clearance and infectivity were not measured, EPA believes these endpoints are not a concern given *Pasteuria nishizawae*—Pn1's well-established host specificity for the soybean cyst nematode (Refs. 1 and 2).

3. Acute injection toxicity/pathogenicity (intravenous)—rat (Harmonized Guideline 885.3200; MRID No. 481517–11). A supplemental acute injection toxicity/pathogenicity study demonstrated that *Pasteuria nishizawae*—Pn1 was not toxic and/or pathogenic to laboratory rats when administered intravenously in a single dose of 1.0×10^9 spores per animal. Although clearance and infectivity were not measured, EPA believes these endpoints are not a concern given *Pasteuria nishizawae*—Pn1's well-established host specificity for the soybean cyst nematode (Refs. 1 and 2).

4. Hypersensitivity incidents (Harmonized Guideline 885.3400; MRID No. 481517–12). The petitioner reported that no hypersensitivity incidents, including immediate-type or delayed-type reactions of humans and domestic animals, occurred during research, development, or testing of *Pasteuria nishizawae*—Pn1.

5. Acute dermal toxicity—rabbit (Harmonized Guideline 870.1200; MRID No. 481517–14). An acceptable acute dermal toxicity study demonstrated that a test substance containing *Pasteuria nishizawae*—Pn1 was not toxic to rabbits when dosed at 2,000 milligrams per kilogram (mg/kg) for 24 hours. The dermal median lethal dose, which is a statistically derived single dose that can be expected to cause death in 50% of test animals, was greater than 2,000 mg/kg for male and female rats combined (Toxicity Category IV).

6. Primary dermal irritation—rabbit (Harmonized Guideline 870.2500; MRID No. 481517–16). An acceptable primary dermal irritation study demonstrated

that a test substance containing *Pasteuria nishizawae*—Pn1 was essentially non-irritating to the skin of rabbits (Toxicity Category IV).

IV. Aggregate Exposure

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. Food exposure. Dietary exposure to *Pasteuria nishizawae*—Pn1, a naturally occurring soil bacterium (Refs. 7, 8, and 9), is anticipated to be negligible. For optimal control of the target pest (soybean cyst nematode), *Pasteuria nishizawae*—Pn1 is applied in a manner that facilitates spore movement into or spore placement near the root zone of potentially affected plants. This requires that end users take certain actions, depending on the treatment type, that would inevitably minimize the amount of *Pasteuria nishizawae*—Pn1 residues on above-ground commodities. That is, although *Pasteuria nishizawae*—Pn1 can be applied to soil, plants, or seeds, some seeds are incorporated into the soil immediately after treatment (at-planting, hopper box, planter box, or slurry box seed treatments), and pesticide applications made to plants or the soil are always followed by irrigation to incorporate *Pasteuria nishizawae*—Pn1 into the soil. In instances where food commodities develop underground or where treated seed is diverted for food or feed purposes or to process into oil, exposure to *Pasteuria nishizawae*—Pn1 is a more likely scenario. Regardless of the situation, should *Pasteuria nishizawae*—Pn1 be present on food, its specificity for the soybean cyst nematode and available data indicate no toxicity, pathogenicity, and/or infectivity is likely to occur with any dietary exposure that results from pesticide applications made in accordance with good agricultural practices (see additional discussion in Unit III.).

2. Drinking water exposure. Exposure to residues of *Pasteuria nishizawae*—Pn1 in consumed drinking water is possible but not likely. The proposed use patterns for *Pasteuria nishizawae*—Pn1 are soil directed, soil incorporated, and/or seed directed, thereby limiting contact with surface water by drift and runoff. Furthermore, ground water is not expected to have significant exposure to *Pasteuria nishizawae*—Pn1 since, like other microorganisms, this microbial pesticide would likely be filtered out by the particulate nature of many soil types (Refs. 10, 11, and 12). If *Pasteuria nishizawae*—Pn1 were to be transferred to surface or ground waters (e.g., through spray drift or runoff) that are intended for eventual human consumption and directed to wastewater treatment systems or drinking water facilities, it may not survive some of the conditions water is subjected to in such systems or facilities, including chlorination, pH adjustments, and filtration (Refs. 13 and 14). In the remote likelihood that *Pasteuria nishizawae*—Pn1 is present in drinking water (e.g., water not subject to certain conditions in treatment systems and facilities), its specificity for the soybean cyst nematode and available data indicate no toxicity, pathogenicity, and/or infectivity is likely to occur with any drinking water exposure that results from pesticide applications made in accordance with good agricultural practices (see additional discussion in Unit III.).

B. Other Non-Occupational Exposure

Given *Pasteuria nishizawae's* natural presence in soil (Refs. 7, 8, and 9), non-occupational exposure to the bacterium is likely already occurring. Additional exposure to *Pasteuria nishizawae*—Pn1 due to pesticidal applications is not expected because all proposed pesticide end-use products are labeled for use in distinct agricultural settings. Even if non-occupational exposures were to occur (e.g., eventual expansion of use sites), such exposures would not exceed EPA's level of concern in light of *Pasteuria nishizawae*—Pn1's specificity for the soybean cyst nematode and test results that indicated *Pasteuria nishizawae*—Pn1 is not toxic (acute dermal toxicity and acute pulmonary toxicity/pathogenicity), is essentially non-irritating (primary dermal irritation), and is not pathogenic (acute pulmonary toxicity/pathogenicity) (see additional discussion in Unit III.).

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance exemption, EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] * * * residues and other substances that have a common mechanism of toxicity.''

No mechanism of toxicity in mammals has been identified for *Pasteuria nishizawae*—Pn1, and *Pasteuria nishizawae*—Pn1 does not appear to produce a toxic metabolite against the target pest. For the purposes of this tolerance action, EPA has assumed that *Pasteuria nishizawae*—Pn1 does not have a common mechanism of toxicity with other substances. Therefore, section 408(b)(2)(D)(v) of FFDCA does not apply. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that, in considering the establishment of a tolerance or tolerance exemption for a pesticide chemical residue, EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor. In applying this provision, EPA either retains the default value of 10X or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Based on the acute toxicity and pathogenicity data discussed in Unit III.B., as well as *Pasteuria nishizawae*—Pn1's host specificity for the soybean cyst nematode, EPA concludes that there are no threshold effects of concern to infants, children, or adults when *Pasteuria nishizawae*—Pn1 is used as labeled in accordance with good agricultural practices. As a result, EPA concludes that no additional margin of exposure (safety) is necessary to protect infants and children and that not adding any additional margin of exposure (safety) will be safe for infants and children.

Moreover, based on the same data and EPA analysis as presented in this unit, the Agency is able to conclude that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the residues of *Pasteuria nishizawae*—Pn1 when it is used as labeled and in accordance with good agricultural practices as a nematicide. Such exposure includes all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has arrived at this conclusion because, considered collectively, the data and information available on *Pasteuria nishizawae*—Pn1 do not demonstrate toxic, pathogenic, and/or infective potential to mammals, including infants and children.

VII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes for the reasons stated in this document and because EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. In this context, EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for *Pasteuria nishizawae*—Pn1.

C. Response to Comments

Two comments were submitted. An anonymous commenter (EPA–HQ–OPP–2010–0012–0019) generally expressed opposition to EPA granting tolerance exemptions to several petitioners, including Pasteuria Bioscience, Inc. Specifically, this commenter mentioned concern with the prevalence of many toxic chemicals in the environment and lack of information regarding how such chemicals combine. Another commenter (EPA–HQ–OPP–2010–0905–0003) also expressed opposition to granting tolerances and tolerance exemptions for several chemicals, including *Pasteuria nishizawae*—Pn1, that were described in the **Federal Register** of February 4, 2011. This commenter stated that the food supply must be rigorously tested, that studies submitted by the chemical industry must be subjected to independent peer review, and that only long-term studies can provide data on the health impact of exposure to the chemicals in the February 4, 2011 notice of filing.

Data provided by the petitioner demonstrated that *Pasteuria nishizawae*—Pn1 is not toxic and/or pathogenic at the doses administered orally, intratracheally, intravenously, and dermally to rats or rabbits (see Unit III.B.). Although infectivity and clearance were not evaluated in any of these studies, EPA believes that these endpoints are not a concern given *Pasteuria nishizawae*—Pn1's well-established host specificity for the soybean cyst nematode (Refs. 1 and 2). Moreover, since no mechanism of toxicity in mammals has been identified for *Pasteuria nishizawae*—Pn1, and *Pasteuria nishizawae*—Pn1 does not appear to produce a toxic metabolite against the target pest, EPA has assumed that *Pasteuria nishizawae*—Pn1 does not have a common mechanism of toxicity with other substances. After conducting a comprehensive assessment of the data and information submitted by the petitioner, EPA has concluded there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Pasteuria nishizawae*—Pn1. Thus, under the standard in FFDCA section 408(c)(2), a tolerance exemption is appropriate.

D. Revisions to Requested Tolerance Exemption

Two modifications have been made to the requested tolerance exemption. First, since Pasteuria Bioscience, Inc. already created a unique isolate identifier (i.e., Pn1) for *Pasteuria nishizawae,* inclusion of the American Type Culture Collection accession number (i.e., SD–5833) within this microbial pesticide's taxonomic name was unnecessary. Use of just *Pasteuria nishizawae*—Pn1 throughout this document, particularly in the tolerance exemption expression, is now consistent with the representation of this active ingredient in other associated regulatory documents and should assist in preventing confusion regarding its nomenclature in the future. Second, EPA is changing ''in or on all raw agricultural crops'' to ''in or on all food commodities'' to align with the terminology the Agency currently uses when establishing tolerance exemptions for residues of other like active ingredients.

VIII. Conclusions

EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Pasteuria nishizawae*—Pn1. Therefore, an exemption from the requirement of a tolerance is established for residues of *Pasteuria nishizawae*—Pn1.

IX. References

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X. Statutory and Executive Order Reviews

This final rule establishes a tolerance exemption under section 408(d) of FFDCA in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require EPA consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 1, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1311 is added to subpart D to read as follows:

§ 180.1311 *Pasteuria nishizawae*—Pn1; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Pasteuria nishizawae*—Pn1 in or on all food commodities when applied as a nematicide and used in accordance with good agricultural practices.

[FR Doc. 2012–3586 Filed 2–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0783; FRL–9332–9]

Spirotetramat; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of spirotetramat in or on onion, dry bulb under section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(l)(6). This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on dry bulb onions. This regulation establishes a maximum permissible level for residues of spirotetramat in or on these commodities. The time-limited tolerances expire on December 31, 2014.

DATES: This regulation is effective February 15, 2012. Objections and requests for hearings must be received on or before April 16, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0783. All documents in the docket are listed in the docket index available in *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose

disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Libby Pemberton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9364; email address: *pemberton.libby@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under section 408(g) of the FFDCA, 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0783 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 16, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0783, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of FFDCA, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing time-limited tolerances for combined residues of spirotetramat, including its metabolites and degradates, in or on onion, dry bulb at 0.3 parts per million (ppm). This time-limited tolerance expires on December 31, 2014.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances to set binding precedents for the application of section 408 of FFDCA and the safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemptions for Spirotetramat on Dry Bulb Onions and FFDCA Tolerances

Thrips rasp the onion tissue and drain the exuding sap, causing stunted and deformed plants. High thrip populations during bulbing can reduce yield. In addition, high thrip populations and the associated damage can shift the onion bulb size distribution downward and reduce onion quality. Of even more concern, thrips can infect plants with iris yellow spot virus. The virus in conjunction with thrips feeding activity can result in an average 25–35%

decrease in yield with yield losses observed as high as 53% in some fields. Onion thrips thrive under hot, dry conditions, and can increase and spread very quickly. In addition to their ability to rapidly increase in population, thrips also migrate into onion fields from adjacent crops. For example, as nearby cereal crops dry down in the early summer and alfalfa fields are harvested, large populations of thrips can migrate to onions. There are a number of products registered for thrips control on onions. Many were never effective or have become ineffective due to development of resistance. Due to the label restrictions on the available effective insecticides, it is currently infeasible for producers to control thrips for the entire production season with the available insecticides in most areas of onion production.

After having reviewed the submissions, EPA determined that an emergency condition exists for eleven states (Colorado, Idaho, Michigan, Minnesota, Nevada, New York, Oregon, Texas, Utah, Washington, and Wisconsin), and that the criteria for approval of emergency exemptions are met. EPA has authorized specific exemptions under FIFRA section 18 for the use of spirotetramat on dry bulb onion for control of onion thrips (*Thrips tabaci*) in the 11 states listed in this unit.

As part of its evaluation of the emergency exemption applications, EPA assessed the potential risks presented by residues of spirotetramat in or on onion, dry bulb. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although this time-limited tolerance expires on December 31, 2014, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on onion, dry bulb after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this time-limited tolerance at the time of that application. EPA will take action to revoke this time-limited tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this time-limited tolerance is being approved under emergency conditions, EPA has not made any decisions about whether spirotetramat meets FIFRA's registration requirements for domestic use on dry bulb onions or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of spirotetramat by a State for special local needs under FIFRA section 24(c). Nor does this tolerance by itself serve as the authority for persons in any State other than the 11 states listed in this unit to use this pesticide on the applicable crops under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for spirotetramat, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of this emergency exemption request and the time-limited tolerances for combined residues of spirotetramat and its metabolites and degradates on onion, dry bulb at 0.3 ppm. EPA's assessment of exposures and risks associated with establishing time-limited tolerances follows.

A. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for spirotetramat used for human risk assessment is discussed in Unit III. of the final rules published in the **Federal Register** of July 9, 2008 (73 FR 39251) (FRL–8367–1) and May 18, 2011 (76 FR 28675) (FRL–8865–8). The final rule of July 9, 2008 established a number of tolerances for residues of spirotetramat, including onion, bulb, subgroup 3A–07. Subsequently, in the final rule published in the **Federal Register** of May 18, 2011, EPA added a footnote to the established tolerance for onion, bulb, subgroup 3A–07 to indicate that currently there are no U.S. registrations for onions. Use on onions at that time was assessed for import tolerances only.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to spirotetramat, EPA considered exposure under the time-limited tolerances established by this action as well as all existing spirotetramat tolerances in 40 CFR 180.641. EPA assessed dietary exposures from spirotetramat in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for spirotetramat. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed 100 percent crop treated (PCT) and tolerance-level residues for all foods. Empirical and Dietary Exposure Evaluation Model (DEEM™) (ver. 7.81) default processing factors were used for processed commodities. Residues in drinking water were addressed by

incorporating directly in the dietary assessment the acute concentrations of spirotetramat residues in surface water estimated by the First Index Reservoir Screening Tool (FIRST) model.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA conducted a conservative chronic dietary assessment assuming tolerance-level residues, empirical and DEEM™ (ver. 7.81) default processing factors, and 100 PCT. Drinking water was incorporated directly in the dietary assessment using the chronic concentrations for surface water.

iii. *Cancer.* Based on the data summarized in Unit IV.A., EPA has concluded that spirotetramat does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for spirotetramat. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for spirotetramat in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of spirotetramat. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the FIRST and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of spirotetramat for acute exposures are estimated to be 0.212 parts per billion (ppb) for surface water; and 3.96×10^{-4} ppb for ground water.

For chronic exposures for non-cancer assessments, the EDWCs are estimated to be 1.37×10^{-3} ppb for surface water and 3.96×10^{-4} ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

For acute dietary risk assessment, the most conservative water concentration value of 0.212 ppb was used to assess the contribution to drinking water based on the use of spirotetramat on pome fruit (0.4 lb ai/A/year).

For chronic dietary risk assessment, the most conservative water concentration of value 1.37×10^{-3} ppb was used to assess the contribution to drinking water, based on the use of spirotetramat on Christmas trees (0.32 lb ai/A/year).

3. *Sources of non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Spirotetramat is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found spirotetramat to share a common mechanism of toxicity with any other substances, and spirotetramat does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that spirotetramat does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

C. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There was no evidence of increased susceptibility of rat or rabbit to prenatal or postnatal exposure to spirotetramat. In the rat developmental toxicity study, toxicity to offspring was observed at the same dose as maternal toxicity, which was also the limit dose. In the developmental toxicity study in the rabbit, only maternal toxicity was observed. In both reproductive toxicity studies, toxicity to offspring (decreased body weight) was observed at the same dose as parental toxicity. Therefore, no evidence of increased susceptibility of offspring was found across four relevant toxicity studies with spirotetramat.

3. *Conclusion.* EPA has determined that reliable data show that the safety of infants and children are adequately protected at the FQPA SF of 1X. That decision is based on the following findings:

i. The toxicity database for spirotetramat is complete except for an immunotoxicity study and a subchronic neurotoxicity study which are considered to be outstanding due to recent amendments to the data requirements in 40 CFR part 158. Despite the absence of these studies, other related studies indicate that the immunotoxicity study and subchronic neurotoxicity study are unlikely to show risks to infants and children that would warrant an additional safety factor. The only indication of possible immunotoxicity in the toxicology database for spirotetramat is a 90-day oral toxicity study in dogs that shows effects in the thymus gland, an organ of the immune system. However, the endpoint selected for risk assessment is protective against these thyroid effects, as it was based on accelerated thymus involution and decreased thyroid hormone levels in the dog. Moreover, thymus involution has been demonstrated to occur in animals when the thyroid is induced to decrease hormone levels, so it is reasonable to conclude that the thymus involution in these dogs was secondary to the thyroid effects, rather than a direct effect on the immune system. The dose at which these effects were observed was chosen as a point of departure because there was some consistency of dose and effect seen across the subchronic and chronic toxicity studies. However, the effects occurred in relatively few animals and thus selection of this endpoint is considered a very protective point of departure; it is at least tenfold lower than any other potential point of departure. With respect to immunotoxicity, no immunotoxic effects were seen in rats or mice, the species in which immunotoxicity studies are conducted. Thus, the Agency does not believe that conducting a functional immunotoxicity study in any rodent species will result in a lower POD than that currently used for overall risk assessment. For this reason and because the current POD is considered

extremely protective, an uncertainty factor (UF_{DB}) is not needed to account for the lack of this study. Data regarding neurotoxicity is discussed in Unit III.C.3.ii.

ii. EPA has concluded that spirotetramat is not a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity. Although a subchronic neurotoxicity study is now required as part of the revisions to 40 CFR part 158, the existing toxicological database indicates that spirotetramat is not a neurotoxic chemical in mammals. The only clinical signs at any dose in the acute neurotoxicity study were staining of the fur or perianal region with urine and decreased motor activity. The urine staining that was identified is not considered a neurotoxic effect and was likely due to a colored metabolite that was excreted into the urine or feces or to a change in the pH of the urine due to an excreted metabolite. The decreased motor activity observed is not considered evidence of neurotoxicity because there were no effects on movement or gait and there were no confirmatory findings of neurological pathology. Thus, both of these effects are considered signs of general toxicity (malaise). Further, the effects seen in the acute neurotoxicity study are not corroborated by any other study in the database. Although brain dilation was found in one dog in the one-year dog study, EPA concluded that this effect was most likely not caused by administration of spirotetramat given evidence showing this to be a congenital anomaly in the test species, and because there is no other evidence of brain pathology in the database. Finally, the conclusion that spirotetramat is not a neurotoxic chemical is supported by the fact that the acute, subchronic and developmental neurotoxcity studies available for structurally-related compounds (spirodiclofen and spiromesifen) do not show evidence of neurotoxicity in adults or young.

iii. There is no evidence that spirotetramat results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. There was no evidence of increased susceptibility of offspring following pre- or post-natal exposure in any study. In the rat developmental toxicity study, toxicity to offspring was observed at the same dose as maternal toxicity, which was also the limit dose. In the developmental toxicity study in the rabbit, only maternal toxicity was observed. In both reproductive toxicity studies, toxicity to offspring (decreased body weight) was observed at the same dose as parental toxicity. Therefore, no evidence of increased susceptibility of offspring was found across four relevant toxicity studies with spirotetramat.

iv. There are no residual uncertainties identified in the exposure databases. The dataset used to establish a tolerance for spirotetramat and its metabolites on onion, bulb, subgroup 3A–07 consisted of field trial data representing application rates of ~0.26 a.i./A (Northern EU, 100 OD formulation) with a 7-day PHI. As specified by the *Guidance for Setting Pesticide Tolerances Based on Field Trial Data* SOP, the field trial application rates and PHIs are within 25% of the maximum label application rate and minimum label PHI, respectively. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to spirotetramat in drinking water. These assessments will not underestimate the exposure and risks posed by spirotetramat.

D. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to spirotetramat will occupy 11% of the aPAD for children 1–2 yrs old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to spirotetramat from food and water will utilize 93% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for spirotetramat.

3. *Short-term risk.* Spirotetramat is not registered for any use patterns that would result in short-term residential exposure.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Spirotetramat is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to spirotetramat through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, spirotetramat is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to spirotetramat residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography with tandem mass spectrometry (HPLC–MS/MS)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The

U.S. provided the primary review of the available toxicology studies, and Canada provided the primary review of the residue chemistry data. All of the residues of concern for tolerances and MRLs have been harmonized among Austria, Canada and the U.S. All toxicology endpoints have been harmonized, with the exception of the acute reference dose (aRfd), which has been harmonized with Canada. The Codex has not established MRLs for spirotetramat on onion, dry bulb. This time-limited tolerance is harmonized with the Canadian MRL for spirotetramat on onion, dry bulb.

VI. Conclusion

Therefore, time-limited tolerances are established for combined residues of spirotetramat, including its metabolites and degradates in or on onion, dry bulb at 0.3 ppm. These tolerances expire on December 31, 2014.

VII. Statutory and Executive Order Reviews

This final rule establishes tolerances under sections 408(e) and 408(l)(6) of FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established in accordance with sections 408(e) and 408(l)(6) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L.104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 1, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.641 is amended by revising paragraph (b) to read as follows:

§ 180.641 Spirotetramat; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances specified in the following table are established for residues of the spirotetramat, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only the sum of spirotetramat (cis-3-(2,5-dimethlyphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl-ethyl carbonate) and its metabolites cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]dec-3-en-2-one, cis-3-(2,5-dimethylphenyl)-3-hydroxy-8-methoxy-1-azaspiro[4.5]decane-2,4-dione, cis-3-(2,5-dimethylphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl beta-D-glucopyranoside, and cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]decan-2-one, calculated as the stoichiometric equivalent of spirotetramat, in or on the specified agricultural commodities, resulting from use of the pesticide pursuant to FIFRA section 18 emergency exemptions. The tolerances expire on the date specified in the table.

Commodity	Parts per million	Expiration date
Onion, dry bulb	0.3	December 31, 2014.

* * * * *

[FR Doc. 2012–3283 Filed 2–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0578; FRL–9336–7]

Indoxacarb; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of indoxacarb in or on egg, poultry fat, poultry meat, and poultry meat byproducts. E.I. du Pont de Nemours and Company requested these

tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 15, 2012. Objections and requests for hearings must be received on or before April 16, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0578. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Julie Chao, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0001; telephone number: (703) 308–8735; email address: *chao.julie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0578 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 16, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0578, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of August 26, 2011 (76 FR 53372) (FRL–8884–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F7873) by E.I. du Pont de Nemours and Company, 1007 Market Street, Wilmington, DE 19898–0001. The petition requested that 40 CFR 180.564 be amended by establishing tolerances for residues of the insecticide indoxacarb, (*S*)-methyl-7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)-phenyl]amino]carbonyl]indeno[1,2e][1,3,4]oxadiazine-4a(3*H*)-carboxylate, its R-enantiomer, (*R*)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl]amino]carbonyl]indeno [1,2-e][1,3,4] oxadiazine-4a(3*H*)-carboxylate, and the metabolites: IN–JT333: Methyl 7-chloro-2,5-dihydro-2-[[[4-(trifluoromethoxy)phenyl]-amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3*H*)-carboxylate; IN–KT319: (*E*)-methyl 5-chloro-2,3,-dihydro-2-hydroxy-1-[[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl]amino]-carbonyl]hydrazono]-1*H*-indene-2-carboxylate; IN–JU873: Methyl 5-chloro-2,3-dihydro-2-hydroxy-1-[[[[4-(triflurormethoxy)-phenyl]amino]carbonyl]hydrazono]-1*H*-indene-2-carboxylate; IN–KG433: Methyl 5-chloro-2,3,-dihydro-2-hydroxy-1-[[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl]amino] carbonyl]-hydrazono]-1*H*-indene-2-carboxylate; and IN–KB687: Methyl [4-(trifluoromethoxy)phenyl]carbamate, in or on egg at 0.2 parts per million (ppm); poultry, fat at 0.2 ppm; poultry, meat at 0.06 ppm; and poultry, meat byproducts at 0.06 ppm. That notice referenced a summary of the petition prepared by E.I. du Pont de Nemours and Company, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical

residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for indoxacarb including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with indoxacarb follows.

In the **Federal Register** of July 10, 2009 (74 FR 33159) (FRL–8424–9), EPA published a Final Rule establishing tolerances for residues of the insecticide indoxacarb in or on various beet commodities and the bushberry subgroup 13–07B. These tolerances had been requested in PP 8E7324. When the Agency conducted the risk assessment in support of the July 10, 2009 tolerance action, it also considered residues of indoxacarb, its R-enantiomer, and its metabolites IN–JT333, IN–KT319, IN–JU873, IN–KG433, and IN–KB687 in or on egg; poultry, fat; poultry, meat; and poultry, meat byproducts. These tolerances were evaluated by EPA based on the results of a previously submitted and accepted poultry feeding study; however, because of a deficiency related to a poultry storage stability study, EPA was not able to establish tolerances on egg and poultry commodities. Since that time, the registrant has provided an acceptable poultry storage stability study, which supports the establishment of tolerances on egg; poultry, fat; poultry, meat; and poultry, meat byproducts. Detailed considerations regarding EPA's resolution of these data deficiencies are discussed in the document, ''Indoxacarb. Petition for the Establishment of Permanent Tolerances on Poultry Commodities and Submission of Storage Stability Data for Poultry Commodities in Response to HED Memorandum DP#297936, 9/22/04,'' which is available at *http://www.regulations.gov* in docket EPA–HQ–OPP–2011–0578.

Since EPA considered the additional uses proposed by PP 1F7873 in its most recent risk assessments, establishing tolerances on these commodities will not change the estimated aggregate risks resulting from use of indoxacarb, as discussed in the **Federal Register** of July 10, 2009 (74 FR 33159) (FRL–8424–9). In that action, EPA concluded that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to indoxacarb residues. Refer to the July 10, 2009 (74 FR 33159) (FRL–8424–9) **Federal Register** document, available at *http://www.regulations.gov* in docket EPA–HQ–OPP–2008–0271, for a detailed discussion of the aggregate risk assessments and determination of safety. The findings in that action apply with equal force here and are adopted by EPA in this rulemaking. Accordingly, EPA concludes that aggregate exposure to indoxacarb will be safe for the general population, including infants and children.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high-performance liquid chromatography (HPLC)/column switching/ultraviolet (UV) method AMR 2712–93 with confirmation/specificity provided by gas chromatography (GC)/mass-selective detector method AMR 3493–95, Supplement No. 4) is available to enforce the tolerance expression.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established MRLs for indoxacarb in or on eggs at 0.02 mg/kg; poultry meat at 0.01 mg/kg; and poultry, edible offal at 0.01 mg/kg. These MRLs are lower than the poultry tolerance levels determined appropriate for indoxacarb in the United States. The U.S. residue definition for poultry commodities includes indoxacarb, its R-enantiomer, and five metabolites, whereas the Codex residue definition includes only indoxacarb and its R-enantiomer. Because the Codex residue definition and evaluation procedures for livestock commodities differ from those of the United States harmonization of U.S. tolerances with Codex MRLs is not possible for poultry commodities.

V. Conclusion

Therefore, tolerances are established for residues of indoxacarb, (*S*)-methyl-7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)-phenyl]amino]carbonyl]indeno[1,2e][1,3,4]oxadiazine-4a(3*H*)-carboxylate; its R-enantiomer (R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl]amino]carbonyl]indeno [1,2-e][1,3,4] oxadiazine-4a(3*H*)-carboxylate; and the metabolites: IN–JT333: Methyl 7-chloro-2,5-dihydro-2-[[[4-(trifluoromethoxy)phenyl]-amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3*H*)-carboxylate; IN–KT319: (*E*)-methyl 5-chloro-2,3,-dihydro-2-hydroxy-1-[[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl]amino]-carbonyl]hydrazono]-1*H*-indene-2-carboxylate; IN–JU873: Methyl 5-chloro-2,3-dihydro-2-hydroxy-1-[[[[4-(triflurormethoxy)-phenyl]amino]carbonyl]hydrazono]-1*H*-indene-2-carboxylate; IN–KG433: Methyl 5-chloro-2,3,-dihydro-2-hydroxy-1-[[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]-hydrazono]-1*H*-indene-2-carboxylate; and IN–KB687: Methyl [4-(trifluoromethoxy)phenyl]carbamate, in or on egg at 0.20 parts per million (ppm); poultry, fat at 0.20 ppm; poultry, meat at 0.06 ppm; and poultry, meat byproducts at 0.06 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 1, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.564 is amended by adding the designation ''(1)'' after the heading ''General'' in paragraph (a), and by adding paragraph (a)(2) to read as follows:

§ 180.564 Indoxacarb; tolerances for residues.

(a) *General.* (1) * * *

(2) Tolerances are established for residues of indoxacarb, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of indoxacarb, (S)-methyl-7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)-phenyl]amino]carbonyl]indeno[1,2e][1,3,4]oxadiazine-4a(3*H*)-carboxylate, its R-enantiomer, (R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl]amino]carbonyl]indeno [1,2-e][1,3,4] oxadiazine-4a(3*H*)-carboxylate, and the metabolites: IN–JT333, methyl 7-chloro-2,5-dihydro-2-[[[4-(trifluoromethoxy)phenyl]-amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3*H*)-carboxylate; IN–KT319, (E)-methyl 5-chloro-2,3,-dihydro-2-hydroxy-1-[[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl]amino]-carbonyl]hydrazono]-1*H*-indene-2-carboxylate; IN–JU873, methyl 5-chloro-2,3-dihydro-2-hydroxy-1-[[[[4-(triflurormethoxy)-phenyl]amino]carbonyl]hydrazono]-1*H*-indene-2-carboxylate; IN–KG433, methyl 5-chloro-2,3,-dihydro-2-hydroxy-1-[[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]-hydrazono]-1 2-carboxylate; and IN–KB687, methyl [4-(trifluoromethoxy)phenyl]carbamate, calculated as the stoichiometric equivalent of indoxacarb in the commodity.

Commodity	Parts per million
Egg	0.20
Poultry, fat	0.20
Poultry, meat	0.06
Poultry, meat byproducts	0.06

* * * * *

[FR Doc. 2012–3157 Filed 2–14–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4043–01]

RIN 0648–XA989

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial sector for golden tilefish in the exclusive economic zone (EEZ) of the South Atlantic. This closure is necessary to protect the golden tilefish resource.

DATES: This rule is effective 12:01 a.m., local time, February 17, 2012, until 12:01 a.m., local time, January 1, 2013.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone: 727–824–5305, email: *Catherine.Bruger@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The commercial quota for golden tilefish in the South Atlantic is 282,819 lb (128,284 kg) for the current fishing year, January 1 through December 31, 2012, as specified in 50 CFR 622.42(e)(2).

Under 50 CFR 622.43(a), NMFS is required to close the commercial sector for golden tilefish when its quota has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial quota for South Atlantic golden tilefish will have been reached by February 17, 2012. Accordingly, the commercial sector for South Atlantic golden tilefish is closed effective 12:01 a.m., local time, February 17, 2012, until 12:01 a.m., local time, January 1, 2013.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having golden tilefish onboard must have landed and bartered, traded, or sold such golden tilefish prior to 12:01 a.m., local time, February 17, 2012. During the closure, the bag limit and possession limits specified in 50 CFR 622.39(d)(1)(ii) and (d)(2), respectively, apply to all harvest or possession of golden tilefish in or from the South Atlantic EEZ, and the sale or purchase of golden tilefish taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of golden tilefish that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, February 17, 2012, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for golden tilefish would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.43(a)(5)(ii).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial sector for golden tilefish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect golden tilefish since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 10, 2012.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–3543 Filed 2–10–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 31
Wednesday, February 15, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 30, 40, 50, 70, and 72

[NRC–2011–0286]

Guidance for Decommissioning Planning During Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; re-opening of comment period.

SUMMARY: On December 13, 2011 (76 FR 77431), the U.S. Nuclear Regulatory Commission (NRC) re-issued Draft Regulatory Guide, DG–4014, ''Decommissioning Planning During Operations'' in the **Federal Register** with a public comment period ending on February 10, 2012. The NRC is re-opening the public comment period for DG–4014 from February 10, 2012 to March 30, 2012. DG–4014 describes a method that the NRC staff considers acceptable for use in complying with the NRC's Decommissioning Planning Rule.

DATES: Submit comments by March 30, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: Please include Docket ID NRC–2011–0286 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0286. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

You can access publicly available documents related to this regulatory guide using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft regulatory guide is available electronically under ADAMS Accession Number ML110960051.
- *Federal Rulemaking Web site:* Public comments and supporting materials related to this regulatory guide can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0286.

FOR FURTHER INFORMATION CONTACT: James C. Shepherd, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–492–6712, email: *James.Shepherd@nrc.gov.*

SUPPLEMENTARY INFORMATION: On December 13, 2011 (76 FR 77431), the NRC published a notice of issuance and availability of Draft Regulatory Guide DG–4014, ''Decommissioning Planning During Operations.'' This DG refers to NUREG–1757 Volume 3, Revision 1, ''Financial Assurance, Recording Keeping, and Timeliness,'' that provides guidance on the financial aspects of the Decommissioning Planning Rule. The NUREG is scheduled for publication on February 27, 2012. Therefore the comment submittal period for DG–4014 is extended from the original date of February 10, 2012 to March 30, 2012.

Dated at Rockville, Maryland, this 7th day of February 2012.

For the U.S. Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–3522 Filed 2–14–12; 8:45 am]

BILLING CODE 7590–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

[Docket No. CPSC–2011–0074]

Table Saw Blade Contact Injuries; Reopening of the Comment Period

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Comment request.

SUMMARY: The Consumer Product Safety Commission (''CPSC'' or ''Commission'' or ''we'') is considering whether a new performance safety standard is needed to address an unreasonable risk of injury associated with table saws. We are conducting this proceeding under the authority of the Consumer Product Safety Act (''CPSA''), 15 U.S.C. 2051–2084. In the **Federal Register** of October 11, 2011 (76 FR 62678), we published an advance notice of proposed rulemaking (''ANPR''), inviting written comments concerning the risk of injury associated with table saw blade contact, regulatory alternatives, other possible

means to address this risk, and other topics or issues. In response to a request from the Power Tool Institute, Inc. (''PTI''), on December 2, 2011, we granted a 60-day extension of the comment period until February 10, 2012 (76 FR 75504). PTI has requested an additional 30-day extension of the comment period and we are reopening the comment period for 30 days.[1]

DATES: Submit comments by March 16, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2011–0074, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through: *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and petition number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Caroleene Paul, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone (301) 987–2225; fax (301) 869–0294; email: *cpaul@cpsc.gov.*

SUPPLEMENTARY INFORMATION: On April 15, 2003, Stephen Gass, David Fanning, and James Fulmer, et al. (''petitioners'') requested that we require performance standards for a system to reduce or prevent injuries from contact with the blade of a table saw. The petitioners cited estimates of 30,000 annual injuries involving table saws, with approximately 90 percent of the injuries occurring to the fingers and hands, and 10 percent of the injuries resulting in amputation. The petitioners alleged that current table saws pose an unacceptable risk of severe injury because they are inherently dangerous and lack an adequate safety system to protect the user from accidental contact with the blade.

In the **Federal Register** of July 9, 2003 (68 FR 40912) and September 5, 2003 (68 FR 52753), we invited comments on the issues raised by the petition (Petition No. CP03–2). We received 69 comments. CPSC staff's initial briefing package regarding the petition is available on the CPSC Web site at: *http://www.cpsc.gov/library/foia/foia06/brief/tablesaw.pdf.* On July 11, 2006, the Commission voted (2–1) to grant the petition and directed CPSC staff to draft an ANPR. On July 15, 2006, the Commission lost its quorum and was unable to move forward with publication of an ANPR at that time. However, CPSC staff continued to evaluate table saws and initiated a special study from January 2007 to December 2008, to gather more accurate estimates on table saw injuries and hazard patterns related to table saw injuries. Based on CPSC staff's updated information on blade contact injuries associated with table saw use and CPSC staff's evaluation of current technologies on table saws, we issued an ANPR on table saw blade contact injuries in the **Federal Register** of October 11, 2011 (76 FR 62678). CPSC staff also updated its briefing package, which supplements the initial briefing package, and the updated briefing package is available on the CPSC Web site at: *http://www.cpsc.gov/library/foia/foia11/brief/tablesaw.pdf.*

The ANPR contained information describing the product, the market for table saws, the incident data, economic considerations, existing standards, and regulatory alternatives (76 FR at 62679 through 62683). The ANPR identified three regulatory alternatives: (1) A voluntary standard addressing risks associated with table saw blade contact injuries; (2) a mandatory rule establishing performance requirements that would address table saw blade contact injuries; or (3) a labeling rule requiring specified warnings and instructions to address table saw blade contact injuries (76 FR at 62683). The ANPR also invited comment on 25 topics or issues. For the reader's convenience, we list those topics or issues here:

1. Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk;
2. Any existing standard or portion of a standard that could be issued as a proposed regulation;
3. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so;
4. Studies, tests, or surveys that have been performed to analyze table saw blade contact injuries, severity of injuries, and costs associated with the injuries;
5. Studies, tests, or surveys that analyze table saw use in relation to approach/feed rates, kickback, and blade guard use and effectiveness;
6. Studies, tests, or descriptions of new technologies, or new applications of existing technologies that can address blade contact injuries, and estimates of costs associated with incorporation of new technologies or applications;
7. Estimated manufacturing cost, per table saw, of new technologies or applications that can address blade contact injuries;
8. Expected impact of technologies that can address blade contact injuries on wholesale and retail prices of table saws;
9. Expected impact of technologies that can address blade contact injuries on utility and convenience of use;
10. Information on effectiveness or user acceptance of new blade guard designs;
11. Information on manufacturing costs of new blade guard designs;
12. Information on usage rates of new blade guard designs;
13. Information on U.S shipments of table saws prior to 2002, and between 2003 and 2005;
14. Information on differences between portable bench saws, contractor saws, and cabinet saws in frequency and duration of use;
15. Information on differences between saws used by consumers, saws used by schools, and saws used commercially—in frequency and duration of use;

[1] The Commission voted 3–1 to publish this notice in the **Federal Register**. Chairman Inez M. Tenenbaum, Commissioner Nancy A. Nord, and Commissioner Anne M. Northup voted to grant the request for an extension and to direct the staff to issue a notice in the **Federal Register**. Commissioner Robert S. Adler voted to deny the request. Commissioner Adler issued a statement. The web address for Commissioner Adler's statement is: *http://www.cpsc.gov/pr/statements.html.*

16. Studies, research, or data on entry information of materials being cut at blade contact (*i.e.,* approach angle, approach speed, and approach force);

17. Information that supports or disputes preliminary economic analyses on the cost of employing technologies that reduce blade contact injuries on table saws;

18. Studies, research, or data on appropriate indicators of performance for blade-to-skin requirements that mitigate injury;

19. Studies, research, or data that validates human finger proxies for skin-to-blade tests;

20. Studies, research, or data on detection/reaction systems that have been employed to mitigate blade contact injuries;

21. Studies, research, or data on the technical challenges associated with developing new systems that could be employed to mitigate blade contact injuries;

22. Studies, research, or data on guarding systems that have been employed to prevent or mitigate blade contact injuries;

23. Studies, research, or data on kickback of a work piece during table saw use;

24. The costs and benefits of mandating a labeling or instructions requirement; and

25. Other relevant information regarding the addressability of blade contact injuries.

The ANPR requested comments by December 12, 2011.

On November 3, 2011, the Power Tool Institute, Inc. (''PTI'') requested a 60-day extension of the comment period. We granted their request and, in the **Federal Register** of December 2, 2011 (76 FR 75504), we extended the comment period to February 10, 2012.

On February 1, 2012, PTI requested another 30-day extension in order for PTI to review Freedom of Information Act requests submitted to the CPSC. On February 8, 2012, the Commission voted (3–1) to grant the request. Through this notice, we are reopening the comment period to give all interested parties additional time to prepare their responses to the ANPR. Thus, the comment period for the ANPR is reopened until March 16, 2012.

Dated: February 10, 2012.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2012–3529 Filed 2–14–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124791–11]

RIN 1545–BK37

Furnishing Identifying Number of Tax Return Preparer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance on the eligibility of tax return preparers to obtain a preparer tax identification number (PTIN). These proposed regulations expand the list of tax return preparers who may obtain and renew a PTIN. The proposed regulations additionally provide guidance concerning those tax forms submitted to the Internal Revenue Service that are considered returns of tax or claims for refund of tax for purposes of the requirement to obtain a PTIN and related provisions. This document also invites comments from the public regarding these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by May 15, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–124791–11), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–124791–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–124791–11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stuart Murray at (202) 622–4940; concerning submissions of comments and requests for a hearing, Oluwafunmilayo (Funmi) Taylor at (202) 622–7180 (not a toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to regulations under section 6109 of the Internal Revenue Code (Code) relating to the identifying number of a tax return preparer and furnishing a tax return preparer's identifying number on tax returns and claims for refund of tax. The Department of Treasury and the Internal Revenue Service published in the **Federal Register** on September 30, 2010 (75 FR 60309) final regulations under section 6109 that prescribe certain requirements relating to the identifying number of tax return preparers.

In particular, the final regulations provided that for tax returns or claims for refund of tax filed after December 31, 2010, the identifying number of a tax return preparer is a PTIN or other identifying number that the IRS prescribes in forms, instructions, or other guidance. The final regulations also provided that after December 31, 2010, a tax return preparer must have a PTIN that is applied for and renewed in the manner the IRS prescribes. The final regulations added § 1.6109–2(d) to the regulations under title 26, providing that to obtain a PTIN or other prescribed identifying number, a tax return preparer must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer authorized to practice before the IRS under Treasury Department Circular No. 230, 31 CFR part 10 (which Treasury and the IRS amended in final regulations published in the **Federal Register** on June 3, 2011 (76 FR 32286)). For purposes of these requirements, a *tax return preparer* means any individual who is compensated for preparing, or assisting in the preparation of, all or substantially all of a tax return or claim for refund of tax. The final regulations under section 6109 additionally added § 1.6109–2(f), which provides that the IRS may conduct a Federal tax compliance check on a tax return preparer who applies for or renews a PTIN or other prescribed identifying number.

Although the rules in the final regulations under section 6109 went into effect on January 1, 2011, § 1.6109–2(h) allows Treasury and the IRS to prescribe, through forms, instructions, or other appropriate guidance, exceptions to the rules in § 1.6109–2, as necessary, in the interest of effective tax administration. Section 1.6109–2(h) also provides that the IRS may specify through other appropriate guidance ''specific returns, schedules, and other forms that qualify as tax returns or claims for refund for purposes of these regulations.''

After § 1.6109–2 was amended, Treasury and the IRS issued Notice 2011–6 (2011 IRB 315 January 17, 2011) (see § 601.601(d)(2)(ii)(*b*) of this chapter), which provides additional guidance on the implementation of § 1.6109–2. Specifically, Notice 2011–6,

in part, provides further guidance as to tax return preparers who may obtain a PTIN. As explained in Notice 2011–6, the IRS ''decided to allow certain individuals who are not attorneys, certified public accountants, enrolled agents, or registered tax return preparers to obtain a PTIN and prepare, or assist in the preparation of, all or substantially all of a tax return in certain discrete circumstances.'' Pursuant to the authority in § 1.6109–2(h), Notice 2011–6 established two additional categories of tax return preparers who may obtain a PTIN: (1) Tax return preparers supervised by attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and enrolled actuaries (see § 1.02a of Notice 2011–6); and (2) tax return preparers who prepare tax returns not covered by a competency examination applicable to registered tax return preparers (see § 1.02b of Notice 2011–6). Notice 2011–6 prescribes the requirements an individual must satisfy under each of these two categories, including passing a Federal tax compliance check and a suitability check (when available). Individuals who obtain or renew a PTIN under either of these categories are not registered tax return preparers. Registered tax return preparers are subject to separate, more extensive requirements in Circular 230, including continuing education.

Also pursuant to the authority in § 1.6109–2(h), the IRS in Notice 2011–6 specified that all tax returns, claims for refund, and other tax forms submitted to the IRS are considered tax returns or claims for refund of tax for purposes of § 1.6109–2 unless the IRS provides otherwise. Section 1.03 of Notice 2011–6 explains that the IRS interprets the term ''tax forms'' broadly for this purpose, and a tax return preparer must obtain a PTIN to prepare for compensation, or to assist in preparing for compensation, all or substantially all of ''any form'' except those forms that the IRS explicitly excludes. Notice 2011–6 lists the forms by number and title that are currently excluded.

Explanation of Provisions

Treasury and the IRS propose to incorporate the relevant provisions of Notice 2011–6 discussed earlier in this preamble in § 1.6109–2. The proposed regulations provide for two additional categories of tax return preparers to obtain a PTIN (or other identifying number the IRS prescribes), namely, certain supervised tax return preparers and tax return preparers who prepare tax returns and claims for refund that are not covered by a competency examination. As to the first category, the proposed regulations provide that any individual 18 years of age or older is eligible for a PTIN if the individual is supervised as a tax return preparer by an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary authorized to practice before the IRS under Circular 230. The proposed regulations provide that the supervision must be in accordance with any requirements the IRS may prescribe; these requirements are currently set forth in § 1.02a of Notice 2011–6.

As to the second category, the proposed regulations provide that any individual 18 years of age or older is eligible for a PTIN if the individual exclusively prepares tax returns and claims for refund that are not covered by any minimum competency test or tests that the IRS prescribes for registered tax return preparers. To be eligible for a PTIN, an individual must certify, at the time and in whatever manner the IRS may prescribe, that the individual only prepares tax returns and claims for refund that are not covered by a minimum competency test. Under the proposed regulations, the individual must also comply with any other eligibility requirements that the IRS may prescribe; these requirements are currently set forth in § 1.02b of Notice 2011–6.

The proposed regulations provide that for purposes of § 1.6109–2, the terms *tax return* and *claim for refund of tax* include all tax forms submitted to the IRS except forms that the IRS specifically excludes in other appropriate guidance. Notice 2011–6 (§ 1.03) is the current guidance specifying the excluded tax forms. The proposed regulations also amend § 1.6109–2(f) to clarify that the IRS may conduct a suitability check, in addition to a Federal tax compliance check, on certain tax return preparers who apply for or renew a PTIN or other prescribed identifying number. This clarification is consistent with the provisions in both the final Circular 230 regulations and Notice 2011–6 stating that certain individuals who apply to obtain or renew a PTIN or to become a registered tax return preparer will be subject to a suitability check, as well as a tax compliance check.

Proposed Effective/Applicability Date

These regulations are effective on the date that final regulations are published in the **Federal Register**. For proposed dates of applicability, see § 1.6109–2(i).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Treasury and the IRS request comments on all aspects of the proposed rules. All comments that are submitted by the public will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Stuart Murray of the Office of the Associate Chief Counsel, Procedure and Administration.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6109–2 also issued under 26 U.S.C. 6109(a)

Par. 2. Section 1.6109–2 is amended by adding a new sentence to the end of paragraph (a)(1) and revising paragraphs (d), (f), (h) and (i) to read as follows:

§ 1.6109–2 Tax return preparers furnishing identifying numbers for returns or claims for refund and related requirements.

(a) * * * (1) * * * For purposes of this section only, the terms *tax return* and *claim for refund of tax* include all tax forms submitted to the Internal Revenue Service unless specifically excluded by the Internal Revenue Service in other appropriate guidance.

* * * * *

(d)(1) Beginning after December 31, 2010, all tax return preparers must have a preparer tax identification number or other prescribed identifying number that was applied for and received at the time and in the manner, including the payment of a user fee, as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(2) Except as provided in paragraph (h) of this section, to obtain a preparer tax identification number or other prescribed identifying number, a tax return preparer must be one of the following:

(i) An attorney;

(ii) A certified public accountant;

(iii) An enrolled agent;

(iv) A registered tax return preparer authorized to practice before the Internal Revenue Service under 31 U.S.C. 330 and the regulations thereunder;

(v) An individual 18 years of age or older who is supervised, in the manner the Internal Revenue Service prescribes in forms, instructions, or other appropriate guidance, as a tax return preparer by an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary authorized to practice before the Internal Revenue Service under 31 U.S.C. 330 and the regulations thereunder; or

(vi) An individual 18 years of age or older who certifies that the individual is a tax return preparer exclusively with respect to tax returns and claims for refund of tax that are not covered, at the time the tax return preparer applies for or renews the number, by a minimum competency examination prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. An individual must comply with any requirements at the time and in the manner that the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance.

* * * * *

(f) As may be prescribed in forms, instructions, or other appropriate guidance, the Internal Revenue Service may conduct a Federal tax compliance check and a suitability check on a tax return preparer who applies for or renews a preparer tax identification number or other prescribed identifying number.

* * * * *

(h) The Internal Revenue Service, through forms, instructions, or other appropriate guidance, may prescribe exceptions to the requirements of this section, including the requirement that an individual be authorized to practice before the Internal Revenue Service before receiving a preparer tax identification number or other prescribed identifying number, as necessary in the interest of effective tax administration.

(i) *Effective/applicability date.* Paragraph (a)(1) of this section applies to tax returns and claims for refund filed after December 31, 2008, except the last sentence of paragraph (a)(1), which applies to tax returns and claims for refund filed on or after the date that final regulations are published in the **Federal Register**. Paragraph (a)(2)(i) of this section applies to tax returns and claims for refund filed on or before December 31, 2010. Paragraph (a)(2)(ii) of this section applies to tax returns and claims for refund filed after December 31, 2010. Paragraph (d)(1) of this section applies to tax return preparers after December 31, 2010. Paragraph (d)(2) of this section applies to tax return preparers on or after the date that final regulations are published in the **Federal Register**. Paragraph (e) of this section applies after September 30, 2010. Paragraph (f) of this section applies on or after the date that final regulations are published in the **Federal Register**. Paragraphs (g) and (h) of this section apply after September 30, 2010.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–3576 Filed 2–14–12; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0048; FRL–9335–3]

Receipt of a Pesticide Petition Filed for Temporary Tolerance Exemption for Residues of Prohydrojasmon in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the amendment of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before March 16, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0048 and the pesticide petition number (PP), by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0048 and the pesticide petition number (PP). EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties

and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Gina Burnett, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 605–0513; email address: *burnett.gina@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments. When submitting comments, remember to:*

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the modification of a regulation in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the modification of regulations for residues of pesticides in or on food various commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

Amended Tolerance Exemption

PP 1G7947. (EPA–HQ–OPP–2010–0048). Fine Agrochemicals, Ltd., c/o SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192, requests to amend an exemption from the requirement of a tolerance in 40 CFR 180.1299 for residues of the plant growth regulator Prohydrojasmon (PDJ) when used on red apple varieties pre-harvest in accordance with good agricultural practices. The amendment will extend the temporary tolerance by 2 years and expand the tolerance for residues of PDJ on grape varieties when used pre-harvest in accordance with good agricultural practices. An

analytical method for residues is not applicable. It is expected that, when used as proposed, prohydrojasmon will not result in residues that are of toxicological concern.

List of Subjects in 40 CFR Part 180

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 2, 2012.

Keith Matthews,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2012–3422 Filed 2–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 280 and 281

[EPA–HQ–UST–2011–0301; FRL–9631–6]

RIN 2050–AG46

Revising Underground Storage Tank Regulations—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the public comment period for the proposed changes to the 1988 underground storage tank (UST) technical, financial responsibility, and state program approval regulations published in the **Federal Register** on November 18, 2011 (76 FR 71708) (FRL–9485–5). These changes establish federal requirements that are similar to key portions of the Energy Policy Act of 2005; they also update certain 1988 UST regulations. Proposed changes include: Adding secondary containment requirements for new and replaced tanks and piping; adding operator training requirements; adding periodic operation and maintenance requirements for UST systems; removing certain deferrals; adding new release prevention and detection technologies; updating codes of practice; making editorial and technical corrections; and updating state program approval requirements to incorporate these new changes. These changes will likely protect human health and the environment by increasing the number of prevented UST releases and quickly detecting them, if they occur. This document extends the comment period for 60 days, from February 16, 2012 until April 16, 2012.

DATES: Comments must be received on or before April 16, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–UST–2011–0301, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: mcdermott.elizabeth@epa.gov.*
- *Mail:* EPA Docket Center (EPA/DC), Docket ID No. EPA–HQ–OPA–2009–0880, Mail Code 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.
- *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington DC 20460. Attention Docket ID No. EPA–HQ–UST–2011–0301. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–UST–2011–0301. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center (EPA/DC) is (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: Elizabeth McDermott, OSWER/OUST (5401P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: 703–603–7175; email address: *mcdermott.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** on November 18, 2011. In that document EPA proposed changes that establish federal requirements that are similar to key portions of the Energy Policy Act of 2005; they also update certain 1988 UST regulations. Several potential commenters requested an extension to the comment period. EPA is hereby extending the comment period, which was set to end on February 16, 2012, to April 16, 2012. To submit comments, please follow the detailed instructions as provided under **ADDRESSES**. If you have questions, consult the individual listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

40 CFR Part 280

Environmental protection, Administrative practice and procedures, Confidential business information, Groundwater, Hazardous materials, Petroleum, Reporting and recordkeeping requirements, Underground storage

tanks, Water pollution control, Water supply.

40 CFR Part 281

Environmental protection, Administrative practice and procedures, Hazardous materials, Petroleum, State program approval, Underground storage tanks.

Dated: February 8, 2012.

Carolyn Hoskinson,

Director, Office of Underground Storage Tanks, Office of Solid Waste and Emergency Response.

[FR Doc. 2012–3589 Filed 2–14–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 120118051–1693–01]

RIN 0648–BB64

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; High Seas Transshipment Prohibitions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS is considering promulgating regulations under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to prohibit the transshipment of highly migratory species (HMS) on the high seas to or from certain types of U.S. vessels that operate in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). These regulations would implement certain decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC) in order to meet the obligations of the United States under the Convention. NMFS issues this advance notice of proposed rulemaking to solicit information and comments about HMS transshipment activities by U.S. vessels, and the potential effects of a prohibition on high seas transshipments in the Convention Area.

DATES: Comments must be submitted in writing by April 16, 2012.

ADDRESSES: Comments on this advance notice of proposed rulemaking (ANPR), identified by NOAA–NMFS–2012–0001, may be sent to either of the following addresses:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking portal *http://www.regulations.gov;* or
- *Mail:* Mail written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments must be submitted to one of the two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are part of the public record and generally will be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS PIRO, (808) 944–2273.

SUPPLEMENTARY INFORMATION:

Electronic Access

This advance notice of proposed rulemaking is also accessible at *http://www.gpoaccess.gov/fr.*

Background on the Convention and the WCPFC

The Convention Area comprises the majority of the western and central Pacific Ocean. A map showing the boundaries of the Convention Area can be found on the WCPFC Web site at: *http://www.wcpfc.int/doc/convention-area-map.* The Convention focuses on the conservation and management of HMS and the management of fisheries for HMS.

As a Contracting Party to the Convention and a Member of the WCPFC, the United States is obligated to implement the decisions of the WCPFC. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*) authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the WCPFC. The authority to promulgate regulations has been delegated to NMFS.

WCPFC Decision Regarding the Prohibition of Transshipments on the High Seas in the Convention Area

At its Sixth Regular Annual Session, in December 2009, the WCPFC adopted Conservation and Management Measure (CMM) 2009–06, ''Conservation and Management Measure on the Regulation of Transhipment.'' The CMM, available with other decisions of the WCPFC at *http://www.wcpfc.int/conservation-and-management-measures,* furthers the objectives of Article 29 of the Convention and includes specific obligations for WCPFC Members, Participating Territories, and Cooperating Non-Members (collectively, CCMs) to regulate transshipment activities in the Convention Area and transshipments elsewhere of HMS caught in the Convention Area. NMFS is implementing the majority of the provisions of CMM 2009–06 in a separate rulemaking proceeding (see NOAA–NMFS–2011–0281 at *www.regulations.gov*).

Under the Convention, CCMs are obligated with limited exceptions to prohibit transshipments at sea involving purse seine vessels in the Convention Area. NMFS has implemented this prohibition (see 50 CFR 300.216(b)). CMM 2009–06 contains a provision obligating CCMs to prohibit their vessels (other than purse seine vessels) from transshipping HMS on the high seas in the Convention Area, subject to certain considerations. The prohibition does not apply to vessels for which the flag CCM has determined that it is impracticable for them to operate without being able to transship on the high seas, and has advised the WCPFC of such. Paragraph 37 of CMM 2009–06 sets forth interim guidelines for CCMs to use in making such determinations. CMM 2009–06 calls for the WCPFC to consider adopting definitive guidelines in 2012.

Under the interim guidelines, vessels are to be excepted from the prohibition on transshipment on the high seas when the flag CCM determines that: (1) The prohibition of transshipment on the high seas would cause a significant

economic hardship, which would be assessed in terms of the cost that would be incurred to transship or land fish at feasible and allowable locations other than on the high seas, as compared to total operating costs, net revenues, or some other meaningful measure of costs and/or revenues; and (2) the vessel would have to make significant and substantial changes to its historical mode of operation as a result of the prohibition of transshipment on the high seas.

Pursuant to a number of fisheries regulations, NMFS collects data from vessel owners and operators on some transshipment activities. However, the data do not cover all transshipment activities that could be subject to this regulation; they do not identify the locations of transshipments (e.g., with respect to in-port versus at-sea, on the high seas versus in waters under national jurisdiction, and inside versus outside the Convention Area), and the types of data collected differ among the fishing fleets. Accordingly, the available data may not provide complete information on historical transshipment activities by U.S. vessels on the high seas in the Convention Area.

Based on the best available data, NMFS is aware that from 1993–2009 an average of 12 transshipments per year were conducted by the U.S. longline fleets operating in the area of application of the Convention, excluding transshipments involving the receipt of only shark fins from foreign-flagged vessels—an activity that was curtailed after the passage of the Shark Finning Prohibition Act in 2000. It is likely that most of these transshipments took place at sea, but it is unknown how many of these transshipments took place on the high seas. It also appears that these transshipments involved vessels in the Hawaii-based longline fleet and the American Samoa-based longline fleet.

NMFS data indicate that U.S. albacore troll vessels operating in the Convention Area conduct at-sea transshipments. For example, from 1990–2004 an average of 49 transshipments per year were conducted by U.S. albacore troll vessels in the area of application of the Convention. It is likely that all of these transshipments took place on the high seas. The available data indicate that no U.S. albacore troll vessel has transshipped at sea in the Convention Area since 2004.

NMFS has no information on high seas transshipments in the Convention Area for vessels in the pole-and-line, handline, tropical troll, or any other HMS fleets.

NMFS is issuing this advance notice of proposed rulemaking to seek public comment on transshipment activities by U.S. HMS fishing fleets in the Convention Area and the impacts that a prohibition on high seas transshipment would have on fishing operations. NMFS would like information that would help it apply the interim guidelines of CMM 2009–06 to determine whether it would be impracticable for certain fishing vessels to operate without being able to transship on the high seas in the Convention Area. In particular, NMFS would like to receive information and comments from potentially affected entities and others on the following: (1) Transshipment activity that has occurred on the high seas in the Convention Area in the past; (2) transshipment activity that presently takes place on the high seas in the Convention Area; (3) transshipment activity that is likely to take place or is anticipated to take place on the high seas in the Convention Area in the future; (4) changes to fishing patterns and practices that could be caused by a prohibition on high seas transshipment in the Convention Area; and (5) the effects (economic or otherwise) that could be caused by a prohibition on high seas transshipment in the Convention Area.

NMFS will consider the information and comments received in order to determine how best to implement the high seas prohibition provision of CMM 2009–06 and any applicable exceptions.

Classification

This advance notice of proposed rulemaking has been determined to be not significant for the purposes of Executive Order 12866.

Authority: 16 U.S.C. 6901 *et seq.*

Dated: February 9, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2012–3545 Filed 2–14–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 110209128–1694–01]

RIN 0648–BA85

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Transshipping, Bunkering, Reporting, and Purse Seine Discard Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to implement requirements for U.S. fishing vessels used for commercial fishing that offload or receive transshipments of highly migratory species (HMS), U.S. fishing vessels used for commercial fishing that provide bunkering or other support services to fishing vessels, and U.S. fishing vessels used for commercial fishing that receive bunkering or engage in other support services, in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). Some of the requirements would also apply to transshipments of fish caught in the area of application of the Convention (Convention Area) and transshipped elsewhere. NMFS also proposes requirements regarding notification of entry into and exit from the ''Eastern High Seas Special Management Area'' (Eastern SMA) and requirements relating to discards from purse seine fishing vessels. This action is necessary for the United States to implement decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC) and to satisfy its obligations under the Convention, to which it is a Contracting Party.

DATES: Comments must be submitted in writing by April 16, 2012.

ADDRESSES: Comments on this proposed rule, identified by NOAA–NMFS–2011–0281, the environmental assessment (EA), the regulatory impact review (RIR) prepared for the proposed rule, the Pacific Transshipment Declaration

Form, and the U.S. Purse Seine Discard Form may be sent to either of the following addresses:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking portal, at *http://www.regulations.gov;* or

• *Mail:* Mail written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments must be submitted to one of the two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are part of the public record and generally will be posted on *http://www.regulations.gov* without change. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

An initial regulatory flexibility analysis (IRFA) prepared under the authority of the Regulatory Flexibility Act (RFA) is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this proposed rule.

Copies of the EA, RIR, Pacific Transshipment Declaration Form, and U.S. Purse Seine Discard Form prepared for this proposed rule are available from *http://www.regulations.gov* or may be obtained from Michael D. Tosatto, NMFS PIRO (see address above).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above) and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS PIRO, 808–944–2273.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is also accessible at *http://www.gpoaccess.gov/fr.*

Background on the Convention and the WCPFC

The Convention Area comprises the majority of the western and central Pacific Ocean (WCPO). A map showing the boundaries of the Convention Area can be found on the WCPFC Web site at: *http://www.wcpfc.int/doc/convention-area-map.* The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS.

As a Contracting Party to the Convention and a Member of the WCPFC, the United States is obligated to implement the decisions of the WCPFC. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the WCPFC. The authority to promulgate regulations has been delegated to NMFS.

This proposed rule would implement provisions adopted by the WCPFC in Conservation and Management Measures (CMMs) 2009–06, 2009–01, 2010–02, and 2009–02. A full discussion of the provisions to be implemented in each CMM is provided below.

WCPFC Decision Regarding the Regulation of Transshipments in the Convention Area

At its Sixth Regular Session, in December 2009, the WCPFC adopted CMM 2009–06, ''Conservation and Management Measure on the Regulation of Transhipment.'' The CMM, available with other decisions of the WCPFC at *http://www.wcpfc.int/conservation-and-management-measures,* furthers the objectives of Article 29 of the Convention and includes specific obligations for WCPFC Members, Participating Territories, and Cooperating Non-Members (collectively, CCMs) to regulate transshipment activities in the Convention Area. Among the objectives of the CMM is to establish procedures to obtain and verify data on the quantity and species transshipped in the Convention Area and on the quantity and species caught in the Convention Area and transshipped elsewhere to ensure accurate reporting of catches, so that stock assessments of HMS include improved data.

CMM 2009–06 is premised on the recognition that unregulated and unreported transshipment of catches of HMS at sea contributes to inaccurate reporting of the catches of such stocks, which contributes to illegal, unreported, and unregulated (IUU) fishing activities. The term transshipment, as specified in the Convention, means the unloading of all or any fish on board a fishing vessel to another fishing vessel either at sea or in port. Provisions of the CMM generally apply to vessel owners and operators that transship HMS covered by the Convention in the Convention Area. Vessel owners and operators undertaking these transshipments must comply with provisions for observer coverage, notice and reporting requirements, and provisions regarding the types of vessels with which transshipments may be conducted. Vessel owners and operators conducting transshipments outside the Convention Area of HMS caught in the Convention Area must also comply with notice and reporting provisions. No provisions of the CMM apply if the fish are both caught and transshipped in archipelagic waters or territorial seas.

The CMM includes provisions that obligate CCMs to do the following: (1) For transshipments of HMS in the Convention Area or HMS caught in the Convention Area, require owners and operators of vessels that offload or receive transshipments, at sea or in port, to complete a transshipment report including specific information detailing the transshipment and the products transshipped; if the transshipment takes place on the high seas or is an emergency transshipment that would otherwise be prohibited, the report must be submitted to the WCPFC within 15 days of the transshipment; (2) require that a notice be submitted to the WCPFC containing specific information in the case of an emergency transshipment of HMS in the Convention Area or HMS caught in the Convention Area that would otherwise be prohibited within 12 hours of the completion of the transshipment by means of a device that can both send and receive data (e.g., fax or email); (3) require that a notice be submitted to the WCPFC containing specific information at least 36 hours prior to each transshipment on the high seas in the Convention Area or of fish caught in the Convention Area and transshipped on the high seas elsewhere by means of a device that can both send and receive data (e.g., fax or email); (4) require that observers be carried on vessels to monitor transshipments at sea in the Convention Area; and (5) prohibit vessels from transshipping to or from a

vessel flagged to a non-CCM in the Convention Area unless that vessel has received specified forms of authorization, such as being listed on the WCPFC Interim Register of Non-Member Carrier and Bunker Vessels (Interim Register) or being specifically licensed to fish in the exclusive economic zone (EEZ) of a CCM in accordance with a decision of the WCPFC.

Under the Convention, CCMs are obligated, with limited exceptions, to prohibit transshipments at sea involving purse seine vessels in the Convention Area. NMFS has implemented this prohibition (see 50 CFR 300.216(b)). CMM 2009–06 also requires CCMs to prohibit transshipments at sea involving purse seine vessels of fish caught in the Convention Area but transshipped outside of the Convention Area. However, purse seine vessels would continue to be able to transship in port.

CMM 2009–06 also contains a provision obligating CCMs to prohibit vessels (other than purse seine vessels) flying their flags from transshipping on the high seas in the Convention Area, subject to certain considerations. NMFS has prepared an advance notice of proposed rulemaking to solicit public comments regarding this provision of CMM 2009–06 (see NOAA–NMFS–2012–0001 at *www.regulations.gov*).

WCPFC Decision Regarding Carrier and Bunker Vessels

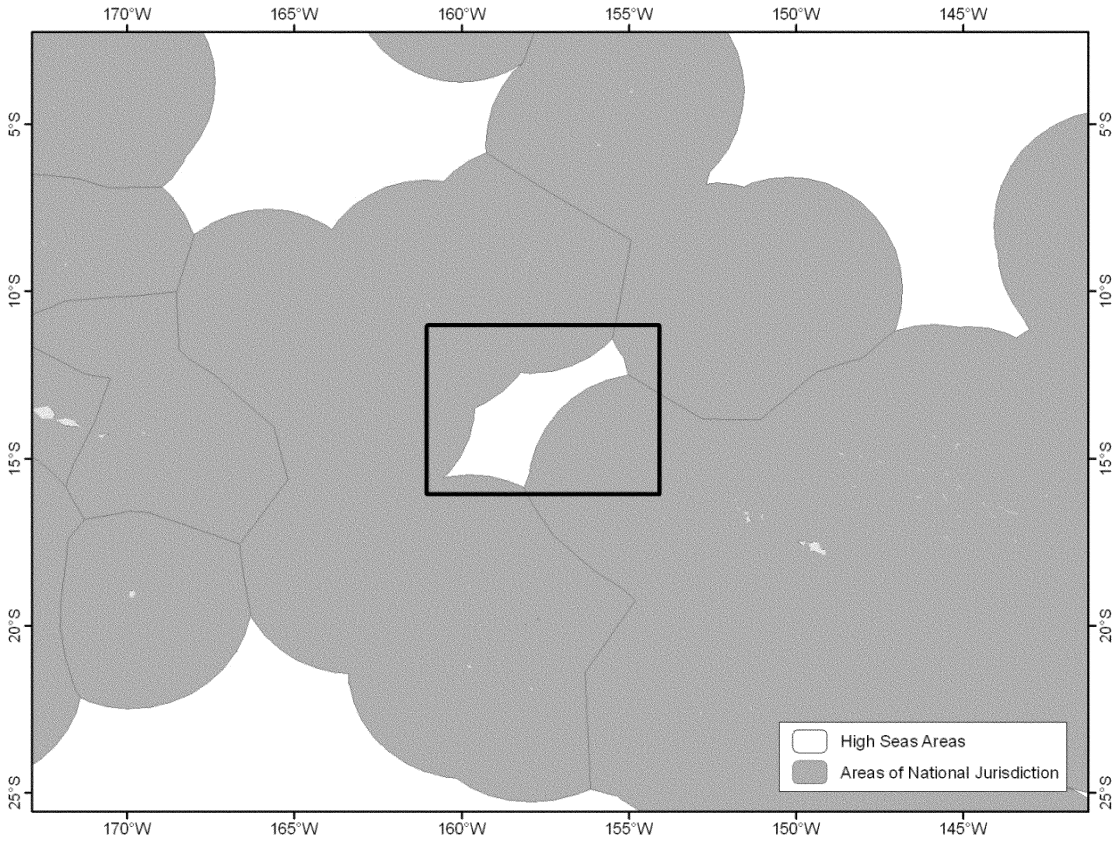
At its Sixth Regular Session, in December 2009, the WCPFC adopted CMM 2009–01, ''WCPFC Record of Fishing Vessels and Authorization to Fish.'' This CMM revised CMM 2004–01, and specifically established the Interim Register, which includes all non-CCM carrier and bunker vessels that are authorized by the Commission to be used in the Convention Area for transshipping, bunkering, or other supply activities. CMM 2009–01 includes a specific provision obligating WCPFC Members and Cooperating Non-Members to prohibit their fishing vessels from conducting transshipping and bunkering or other support activities in the Convention Area with another vessel unless that vessel is: (1) Flagged to WCPFC Members or Cooperating Non-Members; (2) on the Interim Register; or (3) operated under charter, lease, or similar mechanisms as an integral part of the fishery of a CCM, in accordance with relevant WCPFC provisions. This provision is similar to the provision in CMM 2009–06 obligating CCMs to prohibit vessels from transshipping to or from a vessel flagged to a non-CCM unless that vessel has received specific authorization, such as a non-CCM carrier vessel that is on the Interim Register.

WCPFC Decision Regarding Entry and Exit Notification for the Eastern SMA

At its Seventh Regular Session, in December 2010, the WCPFC adopted CMM 2010–02, ''Conservation and Management Measure for the Eastern High-Seas Pocket Special Management Area.'' This measure seeks to reduce IUU fishing and applies to the area of the high seas bounded by the EEZs of the Cook Islands to the north and west, French Polynesia to the east, and Kiribati to the northeast. The measure obligates CCMs to require their vessels to submit reports with specific information, including catch data, at least six hours prior to entry and no later than six hours prior to exiting this area of the high seas.

CMM 2010–02 also includes a provision requiring CCMs to encourage their vessels operating in the Eastern SMA to report sightings of any vessel to the WCPFC Secretariat, and provide specific information to the WCPFC Secretariat for each sighting (date, time, position, bearing, markings, speed, and vessel type). Because of the limited presence of U.S. vessels operating in the Eastern SMA (see the EA) and the non-obligatory nature of this provision, this proposed rule would not implement this provision of CMM 2010–02. The map in Figure 1 shows the Eastern SMA as the high seas area within the rectangle bounded by the bold black lines.

Figure 1. Eastern SMA. Areas of high seas are indicated in white; areas of claimed national jurisdiction, including territorial seas, archipelagic waters, and EEZs, are indicated in dark shading. The Eastern SMA is the high seas area (in white) within the rectangle bounded by the bold black lines. This map displays indicative maritime boundaries only.



WCPFC Decision on Discards From Purse Seine Vessels

At its Sixth Regular Session, in December 2009, the WCPFC adopted CMM 2009–02, ''Conservation and Management Measure on the Application of High Seas Fish Aggregating Device (FAD) Closures and Catch Retention.'' The provisions in CMM 2009–02 modify or supplement the provisions in CMM 2008–01, ''Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean,'' for FAD prohibition periods and catch retention requirements for purse seine fishing vessels, including specific requirements for reporting discards of fish. Prior to the adoption of CMM 2009–02, NMFS issued regulations implementing the requirements for the FAD prohibition periods and catch retention specified in CMM 2008–01. Those regulations are set forth at 50 CFR 300.223. NMFS has determined that the regulations implementing the FAD prohibition periods and catch retention requirements under CMM 2008–01 are consistent with the related provisions of CMM 2009–02. Therefore, no additional steps need to be taken at this time to implement these provisions, except that NMFS proposes to remove the termination date (December 31, 2012) applicable to the current catch retention provision. In addition, CMM 2009–02 also contains new reporting requirements for discards of fish from purse seine vessels, which would be implemented under this rulemaking. The reporting provisions obligate CCMs to require owners and operators of vessels to ensure the submission of a report to the Commission containing specific information regarding discards no later than 48 hours after any discard at sea of fish. The provisions also obligate CCMs to require that a hard copy of the information be provided to the WCPFC Observer on board the vessel.

Net Sharing Restrictions

This proposed rule also would implement restrictions regarding ''net sharing'' (i.e., the transfer of fish that have not yet been loaded on board any fishing vessel from the purse seine net of one vessel to another fishing vessel) for U.S. purse seine vessels fishing in the Convention Area. The regulations at 50 CFR 300.223(d) implementing the catch retention requirements of CMM 2008–01 require U.S. purse seine fishing vessels to retain all catch of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*) unless: (1) The fish are unfit for human consumption; (2) there is insufficient well space to accommodate all the fish captured in a given set, provided that no additional sets are made during the trip; or (3) serious malfunction of equipment occurs. In addition, the regulations at 50 CFR 300.216 prohibit purse seine vessels from conducting transshipments at sea in the Convention Area. However, on occasion a vessel will have insufficient well space to accommodate all the fish caught in a set.

NMFS believes that in such circumstances, it would be appropriate to allow the vessel to transfer the excess fish in the net to another vessel for the purpose of reducing discards. NMFS' proposal is consistent with CMM 2008–01, which states that ''excess fish taken in the last set may be transferred to and retained on board another purse seine vessel provided this is not prohibited under applicable national law.''

Thus, the proposed rule would exclude net sharing activities from the definition of transshipment (which for purse seine vessels is generally prohibited at sea). However, a purse seine vessel that transfers fish through net sharing would be prohibited from making any additional purse seine sets during the remainder of its fishing trip.

Under the proposed rule, U.S. purse seine vessels would be prohibited from net sharing with the exception that they

would be allowed to conduct limited net sharing, as described above, on the final set of a trip with other U.S. purse seine vessels. However, since NMFS has limited ability to enforce a last-set requirement for foreign vessels, the proposed rule would prohibit U.S. purse seine vessels from conducting any net sharing with foreign-flagged vessels.

Existing Regulations Governing Transshipment Activities in the Convention Area

Certain vessel owners and operators that would be subject to this proposed rule are currently subject to regulations regarding transshipments, specifically on reporting transshipment activities. None of the requirements under the proposed rule would conflict with those regulations. However, there would be some overlap with the current reporting requirements. These overlaps are described below. Aside from the 15-day requirement for high seas and emergency transshipments, as described above, CMM 2009–06 does not provide specific requirements for when the transshipment report must be submitted. Thus, the proposed rule would require vessel owners and operators who are subject to other existing transshipment reporting requirements to submit the information in the transshipment report on the same schedule as those requirements for all transshipments other than emergencies or those that occur on the high seas.

Requirements for Vessels Licensed Under the South Pacific Tuna Act of 1988

The South Pacific Tuna Act, (SPTA; 16 U.S.C. 973–973r), implements the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (Treaty), which requires the submission of a transshipment logsheet form. Purse seine vessels licensed under the SPTA implementing regulations must complete a transshipment logsheet form for each transshipment. The logsheet form, which can be obtained from the NMFS Pacific Islands Regional Administrator, must be accompanied by a report of the size breakdown of the catch as determined by the receiver of the fish, also known as a ''final outturn'' report. The logsheet form and final outturn report must be submitted to the NMFS Pacific Islands Regional Administrator within two days of the completion of the transshipment and to the Treaty Administrator (currently the Pacific Islands Forum Fisheries Agency (FFA)) within fourteen days of the transshipment (50 CFR 300.34(c)(2)). Owners and operators of vessels licensed under the SPTA that are involved in transshipments of HMS in the Convention Area or in transshipments of HMS caught in the Convention Area and transshipped elsewhere, would be subject to the new reporting requirements in the proposed revised section 300.218 of title 50 of the Code of Federal Regulations set forth in this proposed rule.

Requirements for Vessels Receiving Transshipments of Longline-Caught Fish

Under current regulations, owners and operators of vessels registered for use as receiving vessels used to land or transship western Pacific pelagic management unit species (MUS) (i.e., species managed under the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region) that were harvested using longline gear shoreward of the outer boundary of the U.S. EEZ around American Samoa, Hawaii, Guam, the Commonwealth of the Northern Mariana Islands, or the Pacific remote island areas (PRIA; these include Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, Wake Island, and Midway Atoll), must submit a transshipment logbook containing report forms available from the NMFS Pacific Islands Regional Administrator. All information specified on the form must be recorded on the form within 24 hours of the transshipment. Each form must be signed and dated by the receiving vessel operator. The original logbook form for each day of transshipment activity must be submitted to the NMFS Pacific Islands Regional Administrator within 72 hours of each landing of western Pacific pelagic MUS (50 CFR 665.14(c) and 50 CFR 665.801(e)).

NMFS would replace the transshipment logbook form currently in use with the proposed Pacific Transshipment Declaration Form. Thus, owners and operators of vessels receiving transshipments of longline-caught fish in the U.S. EEZ around American Samoa, Hawaii, Guam, the Commonwealth of the Northern Mariana Islands, or PRIA would be required to submit only one form for a given transshipment. Owners and operators of vessels that offload the fish would be required to complete the form as well, though they are not required to do so under the current regulations.

The transshipment reporting requirements under CMM 2009–06 do not include several of the pieces of information on the existing form, which, again, is currently required to be completed only by owners or operators of receiving vessels. These include: (1) The receiving vessel permit number; (2) the broker or shipping agent of the receiving vessel; (3) the port of landing of the receiving vessel; (4) the number of days the offloading vessel fished; (5) the number of sets made by the offloading vessel; (6) the average number of hooks fished per day by the offloading vessel; and (7) the general area of the offloading vessel's catch, broken into four specific quadrants. Based on the recommendations of the Western Pacific Fishery Management Council at its 148th Meeting, NMFS proposes to include the port of landing and broker or shipping agent information requirements in the new transshipment report form; the other pieces of information that are not required under the provisions of CMM 2009–06 would not be included.

Requirements for Vessels Fishing for HMS in the U.S. EEZ Off the Coasts of Washington, Oregon, California, or Adjacent High Seas Waters

Current Federal regulations require the operator of any commercial fishing vessel or recreational charter vessel fishing for HMS in the management area of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species to maintain on board the vessel an accurate and complete record of catch, effort, and other data on report forms available from the NMFS Southwest Regional Administrator. All information specified on the forms must be recorded on the forms within 24 hours of the completion of each fishing day. The current version of these forms includes information about at-sea transshipments. The original form for each day of the fishing trip must be submitted to the NMFS Southwest Regional Administrator within 30 days of each landing or transshipment of HMS (50 CFR 660.708(a)). The form currently only requires three pieces of information regarding transshipments—the date, transshipper (receiving vessel), and amount (tonnage) of fish transshipped. Such information is required to be reported only for transshipments that take place at sea. Under this proposed rule, vessel owners and operators subject to the transshipment requirements at 50 CFR part 660 and the requirements proposed in this rule would be required to complete and submit the current report form as well as the new transshipment report proposed in this rule.

Proposed Action

This proposed rule contains the following seven new categories of

requirements: (1) Reporting requirements for transshipments, including the information specified in Annex I of CMM 2009–06 for the transshipment report; (2) requirements for providing notice of transshipments on the high seas or emergency transshipments that would otherwise be prohibited; (3) requirements for observer coverage for transshipments at sea; (4) restrictions on the vessels with which transshipping, bunkering or other support activities may be conducted; (5) requirements regarding notification of entry into and exit from the Eastern SMA; (6) requirements regarding discards from purse seine fishing vessels; and (7) other requirements. Each of these categories of requirements is described in detail below.

1. Transshipment Reporting Requirements

The owner and operator (operator means, with respect to any vessel, the master or other individual aboard and in charge of that vessel) of any U.S. fishing vessel used for commercial fishing that transships HMS in the Convention Area, whether from an offloading or receiving vessel, or that transships HMS caught in the Convention Area, whether from an offloading or receiving vessel, would be required to ensure the completion of and submission to NMFS of a transshipment report form available from the NMFS Pacific Islands Regional Administrator. A separate report would be required for each transshipment. As some of the information might be known by only the receiving vessel operator and some of the information might be known only by the offloading vessel operator, the operators of both vessels may need to exchange information regarding transshipment activities.

The information specified on the report would need to be recorded within 24 hours of completion of the transshipment. For transshipments on the high seas or for emergency transshipments that would otherwise be prohibited, the report would be required to be submitted by email or fax to the appropriate address specified by the NMFS Pacific Islands Regional Administrator no later than 10 calendar days after completion of the transshipment. The report could be submitted without signatures to accommodate vessels that remain at sea for a substantial period of time and that might, for example, need to report the information needed on the form via radio to a shore agent because they do not have fax or email capabilities. This would enable NMFS to submit the report to the Commission within the 15-day due date under the CMM.

The original, signed copy of the report would be submitted to the address specified on the form no later than 15 calendar days after the vessel first enters into port or 15 calendar days after the transshipment for emergency transshipments in port. For all other transshipments, if the vessel owner and operator is subject to current transshipment reporting requirements at 50 CFR part 300 subpart D, 50 CFR part 660, or 50 CFR part 665, the transshipment report would be required to be submitted by the due date for submitting the original report specified in those regulations. If the vessel owner and operator are not subject to any of the current requirements, for transshipments at sea the report would be required to be submitted no later than 72 hours after the vessel first enters into port; for transshipments in port, the report would be required to be submitted no later than 72 hours after completion of the transshipment.

2. Prior Notice for High Seas Transshipments and Notice of Emergency Transshipments

Under the current requirements at 50 CFR 300.216, transshipments at sea involving purse seine vessels are currently prohibited in the Convention Area. As discussed above, CMM 2009–06 also obligates CCMs to prohibit the transshipment at sea of HMS caught in the Convention area by purse seine vessels regardless of the location of the transshipment. Accordingly, the rule proposes to revise the regulations at 50 CFR 300.216 to include that additional prohibition.

For any transshipment of HMS on the high seas in the Convention Area or on the high seas anywhere of HMS caught in the Convention Area that are not prohibited (e.g., high seas transshipments by vessels other than purse seine vessels), vessel owners and operators would be required to ensure the submission to the Commission of notice of the transshipment, as specified in CMM 2009–06, at least 36 hours prior to the transshipment. The notice would be provided by fax or email, and would include the following information: (1) The name of the offloading vessel; (2) the vessel identification markings located on the hull or superstructure of the offloading vessel; (3) the name of the receiving vessel; (4) the vessel identification markings located on the hull or superstructure of the receiving vessel; (5) the expected amount, in metric tons, of the fish product being transshipped, broken down by species and processed state; (6) the expected date or dates of the transshipment; (7) the expected location of transshipment, including latitude and longitude to the nearest tenth of a degree; (8) an indication of which one of the following areas the expected transshipment location is situated—high seas inside the Convention Area, high seas outside the Convention Area, or an area under the jurisdiction of a particular nation—in which case the nation must be specified; and (9) the geographic location of the catch: The expected amount of HMS to be transshipped, in metric tons, that was caught in each of the following areas: Inside the Convention Area on the high seas, outside the Convention Area on the high seas, and within areas under the jurisdiction of a particular nation, with each such nation and the associated amount specified. Information regarding the geographic location of the catch is not required, however, if the reporting vessel is the receiving vessel. The transshipment would be required to take place within 24 nautical miles of the expected location provided in the notice.

Notice would also be required for emergency transshipments that would otherwise be prohibited. An emergency transshipment would be defined as a transshipment conducted under circumstances of force majeure or other serious mechanical breakdown that could reasonably be expected to threaten the health or safety of the vessel or crew or cause a significant financial loss through fish spoilage. Each vessel owner or operator that qualifies for the emergency would be required to ensure the provision of the notice directly to the Commission by fax or email within 12 hours of completion of the transshipment and would be required to ensure the inclusion of the same information described above for the notice for high seas transshipments, as well as a description of the reasons for the emergency transshipment. The transshipment would be required to take place within 24 nautical miles of the location provided in the notice.

This proposed rule would allow emergency transshipments involving purse seine vessels to take place at sea in the Convention Area; such transshipments are currently prohibited under the regulations. The current regulations implement Article 29, Paragraph 5 of the Convention and are intended to prohibit at sea transshipments by purse seine vessels operating in the Convention Area, subject to specific exemptions adopted by the WCPFC. CMM 2009–06 affirms the prohibition set forth at Article 29, Paragraph 5 of the Convention, requires

CCMs to prohibit transshipments at sea involving purse seine vessels of fish caught in the Convention Area but transshipped outside of the Convention Area, and sets forth specific exemptions for transshipment at sea by purse seine vessels, such as for an emergency.

A copy of each notice would be required to be submitted to NMFS by the same due dates specified for submission to the Commission: at least 36 hours prior to transshipment on the high seas or 12 hours after completion of an emergency transshipment.

3. Observer Coverage for Transshipments at Sea

Transshipments at sea in the Convention Area would require observer coverage for vessels, with the specific requirements dependent upon the type of vessel and the type of fish to be transshipped. Observer coverage would not be required for emergency transshipments at sea (i.e., a transshipment conducted under circumstances of force majeure or other serious mechanical breakdown that could reasonably be expected to threaten the health or safety of the vessel or crew or cause a significant financial loss through fish spoilage). The observers would be required to be WCPFC Observers. Observers deployed by NMFS are currently considered WCPFC Observers, as the program has completed the required authorization process to become part of the WCPFC Regional Observer Programme (ROP). For most transshipments, an observer would be required on board the receiving vessel. However, for transshipments to a receiving vessel less than or equal to 33 meters in length, and not involving purse seine-caught fish or frozen longline-caught fish, the observer could be deployed on either the offloading vessel or receiving vessel. In addition, transshipments to receiving vessels greater than 33 meters in length and involving only troll-caught or pole-and-line-caught fish would not require an observer until January 1, 2013. All involved vessel owners and operators would need to ensure that a WCPFC Observer is on board one of the two vessels to monitor the transshipment for the duration of the transshipment, even when the requirement to carry an observer falls on the other vessel involved in the transshipment (e.g., the observer requirement is only for the receiving vessel). The owner or operator of a vessel requiring an observer for transshipments at sea would need to ensure that notice is provided to the NMFS Pacific Islands Regional Administrator at least 72 hours (exclusive of weekends and Federal holidays) before the vessel leaves port on the fishing trip indicating the need for an observer. The notice would need to include the official number of the vessel, the name of the vessel, intended departure date, time and location, the name of the operator, and a telephone number at which the owner, operator, or a designated agent may be contacted during the business day (8 a.m. to 5 p.m. Hawaii Standard Time). If applicable, notice could be provided in conjunction with the notice required under 50 CFR 665.803(a).

Vessel owners, operators, and crew would be required to provide any WCPFC Observer on board with full access to their vessel during the transshipments, as well as access to information and data sources regarding the transshipment. CMM 2009–06 includes provisions for allowing observers full access to both the unloading and the receiving vessel and requires the WCPFC to develop guidelines for the safety of observers moving between vessels. NMFS intends to implement this provision of the CMM after the WCPFC develops and issues appropriate safety guidelines.

CMM 2009–06 specifies that during transshipment, a receiving vessel must receive product from only one offloading vessel at a time for each observer that is available to monitor the transshipment; the observer may be on the offloading or receiving vessel. Accordingly, if only one WCPFC Observer is available, the receiving vessel would be able to receive HMS from only one offloading vessel at a time.

The requirements described above would be implemented through amendments to the current WCPFC observer requirements for U.S. vessels set forth at 50 CFR 300.215 and to the regulations at 50 CFR 300.216.

4. Categories of Vessels With Which Transshipping and Bunkering May Be Conducted

The owner and operator of any U.S. fishing vessel used for commercial fishing for HMS would be required to ensure that any vessel with which they engage in transshipment (to or from) in the Convention Area; or engage in bunkering or other support activities (to or from) in the Convention Area falls into one of the three of the following categories. The vessels must be: (1) Flagged by a WCPFC Member or Cooperating Non-Member; (2) on the Interim Register, which is available at *http://www.wcpfc.int/;* or (3) on the WCPFC Record of Fishing Vessels, which is available at *http://www.wcpfc.int/*. Only fishing vessels that are authorized to be used for fishing in the U.S. EEZ would be able to transship and/or bunker in the U.S. EEZ.

5. Requirements Regarding Notification of Entry Into and Exit From Eastern SMA

The owner or operator of any U.S. fishing vessel used for commercial fishing would be required to ensure the submission of a notice to the Commission containing specific information at least six hours prior to entry and no later than six hours prior to exiting the Eastern SMA. The notices would be required to be submitted in the format specified by the NMFS Pacific Island Regional Administrator via fax or email and would include the following information: (1) The vessel identification markings located on the hull or superstructure of the vessel; (2) whether the notice is for entry or exit; (3) date and time of anticipated point of entry or exit; (4) latitude and longitude of anticipated point of entry or exit; (5) amount of fish product on board at the time of the report, in kilograms, in total and for each of the following species or species groups: Yellowfin tuna, bigeye tuna, albacore, skipjack tuna, swordfish, shark, other; and (6) an indication of whether the vessel has engaged in or will engage in any transshipments while in the Eastern SMA. A copy of the notice would be required to be provided to NMFS at least six hours prior to the entry and no later than six hours prior to the exit. As discussed in more detail in the IRFA, below, these requirements would overlap with current reporting requirements for U.S. purse seine vessels; the current requirements require notice to be provided every time a vessel enters or exits the EEZ of a Pacific Island Party to the Treaty.

6. Requirements Regarding Discards From Purse Seine Fishing Vessels

The owner or operator of any U.S. purse seine fishing vessel would be required to ensure the submission of a report containing specific information to the Commission and a copy of the report to NMFS no later than 48 hours after any discard at sea of fish. The reports would be required to be submitted in the format specified by the NMFS Pacific Islands Regional Administrator via fax or email. A hard copy of the report would be required to be submitted to the observer on board the vessel. This report would overlap with current purse seine catch reporting requirements, as discussed in more detail below in the IRFA.

7. Other Requirements

This proposed rule would prohibit the transfer of fish at sea from a purse seine net deployed by or under the control of a fishing vessel of the United States to another fishing vessel in the Convention Area. However, as discussed above, the proposed rule includes a narrow exception that would allow U.S. purse seine vessels to transfer fish through net sharing to other U.S. purse seine vessels on the final set of a trip when there is insufficient well space for the fish. The proposed rule would amend the current regulatory definition of transshipment to exclude net sharing from the definition as purse seine vessels are generally prohibited from engaging in transshipment of HMS at sea. Under the exception for net sharing, the purse seine vessel that transfers fish through net sharing would be prohibited from making further purse seine sets during the remainder of its fishing trip.

Furthermore, in waters under the jurisdiction of the United States, net sharing would be allowed only between U.S. vessels that are authorized to be used for fishing in that area. In the event of a net share, the owner and operator of the vessel that caught the fish would record the catch, as required under 50 CFR 300.34(c)(1) on the Regional Purse Seine Logsheets (RPLs), and would also be required to note that the net sharing had taken place, in the manner specified by the NMFS Pacific Islands Regional Administrator, on the RPL. The owner and operator of the vessel that received the fish would also be required to note on the RPL that the net sharing had taken place, in the manner specified by the NMFS Pacific Islands Regional Administrator.

In addition to the new requirements, the proposed rule would amend the language that is in 50 CFR 300.223(d) to remove the termination date (December 31, 2012) applicable to the current catch retention provision. The proposed rule would also correct 50 CFR 300.222(y), which is inconsistent with 50 CFR 300.223(d)(3). Section 300.223(d)(3) states that the catch retention requirements are applicable to the entire Convention Area. However, section 300.222(y) states that the prohibition on discarding fish at sea in contravention of section 300.223(d) is limited to the high seas and areas within the jurisdiction of the United States, including the EEZ and territorial sea between 20° N. latitude and 20° S. latitude. This proposed rule would amend section 300.222(y) to amend the description of the requirement to state that the retention requirements are applicable to the entire Convention Area.

The proposed rule would also include a minor change to the wording of the current language at 50 CFR 300.216(b) so that the terminology referring to U.S. purse seine vessels is consistent throughout 50 CFR 300 Subpart O—the phrase ''purse seine fishing vessel of the United States'' would be replaced with ''fishing vessel of the United States equipped with purse seine gear.''

As mentioned above, CMM 2009–06 requires CCMs to prohibit transshipments at sea involving purse seine vessels of fish caught in the Convention Area but transshipped outside of the Convention Area. Accordingly, the proposed rule would include this prohibition. The proposed rule would also allow emergency transshipments involving purse seine vessels to take place at sea in the Convention Area.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment.

Executive Order 12866

The proposed rule was determined not to be significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

An IRFA was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained above in the **SUMMARY** section of the preamble and in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble, in particular, in the first few paragraphs of this section and in the section titled Proposed Action. The analysis follows:

There would be no disproportionate economic impacts between small and large entities operating vessels as a result of this proposed rule. Furthermore, there would be no disproportionate economic impacts based on vessel size, gear, or homeport.

The proposed rule would apply to owners and operators of U.S. HMS fishing vessels used to: (1) Transship HMS in the Convention Area or to transship outside the Convention Area HMS caught in the Convention Area; (2) enter or exit the Eastern SMA; or (3) purse seine for HMS in the Convention Area. The estimated number of affected entities is as follows, broken down by vessel type:

Based on the number of longline vessels permitted to fish under the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region or the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species as of January 2011, the estimated number of longline vessels to which the rule would apply is 170. Based on the number of purse seine vessels licensed under the South Pacific Tuna Treaty as of January 2011, the estimated number of purse seine vessels to which the rule would apply is 36. Based on the average annual number of albacore troll vessels that fished in the Convention Area during 2002–2009, the estimated number of troll vessels to which the rule would apply is 26. The total estimated number of vessels that would be subject to the rule is 232.

Based on the best available financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that all the affected fish harvesting businesses in the longline and troll fleets are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than $4.0 million. In the purse seine fleet, most or all of the businesses that operate these vessels are large entities as defined by the RFA. However, it is possible that one or a few of these fish harvesting businesses meet the criteria for small entities, so the purse seine fleet is included in the remainder of this analysis.

The reporting, recordkeeping and other compliance requirements of this proposed rule are described earlier in the preamble. The classes of small entities subject to the requirements and the types of professional skills necessary to fulfill the requirements are as follows:

(1) Transshipment reporting: This requirement is part of a proposed collection of information subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The requirement to complete and submit transshipment reports to NMFS would apply to the owners and operators of any vessel used to offload or receive a transshipment of HMS in the Convention Area or a transshipment outside the Convention Area of HMS caught in the Convention Area. Accordingly, it would apply to all the vessels identified above (170 longline, 36 purse seine, and 26 troll). It is estimated that each transshipment report would require about 60 minutes

of labor and $1 in communication costs for transmitting each report electronically and in hard copy to NMFS. The value of the required labor is estimated to be $60 per hour. The estimated cost of compliance is therefore about $61 per report. The estimated compliance costs per affected entity are described below, by vessel type:

Each longline vessel is expected to transship between zero and approximately four times per year. The estimated annual cost of compliance is therefore between $0 for a vessel that does not transship to about $244 for a vessel that transships four times per year.

Each purse seine vessel is expected, based on the U.S. purse seine fleet's transshipment patterns during 2008 and 2009, to transship between zero and approximately 19 times per year. The estimated annual cost of compliance is therefore between $0 for a vessel that does not transship to about $1,159 for a vessel that transships 19 times per year.

Each troll vessel is expected to transship between zero and approximately two times per year. The estimated annual cost of compliance is therefore between $0 for a vessel that does not transship to about $122 for a vessel that transships two times per year.

Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(2) Prior notice for high seas transshipments and emergency transshipments: This requirement is part of a proposed collection of information subject to approval by the Office of Management and Budget (OMB) under the PRA. The requirement to provide prior notice for transshipments would apply to the owners and operators of any vessel used for any transshipment on the high seas, as well as for any emergency at-sea transshipment that would be otherwise prohibited. Accordingly, it would apply to all the vessels identified above (170 longline, 36 purse seine, and 26 troll). It is estimated that each transshipment notice would require about 15 minutes of labor and no more than $1 in communication costs. The value of the required labor is estimated to be $60 per hour. The estimated cost of compliance is therefore about $16 per notice. The estimated compliance costs per affected entity are described below, by vessel type:

Each longline vessel is expected to transship on the high seas between zero and approximately four times per year. The estimated annual cost of compliance is therefore between $0 for a vessel that does not transship on the high seas to about $64 for a vessel that transships on the high seas four times per year.

Purse seine vessels would not be allowed to transship at sea except under emergency situations. Each purse seine vessel is expected to transship at sea under emergency situations between zero and approximately one time per year. The estimated annual cost of compliance is therefore between $0 for a vessel that does not transship at sea to about $16 for a vessel that transships at sea once per year.

Each troll vessel is expected to transship on the high seas between zero and approximately two times per year. The estimated annual cost of compliance is therefore between $0 for a vessel that does not transship on the high seas to about $32 for a vessel that transships on the high seas two times per year.

Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(3) Observer coverage for transshipments at sea: This includes a requirement to carry a WCPFC observer on certain trips involving transshipments, as well as a requirement to notify NMFS in advance of such a trip so that an observer can be deployed on the vessel. The pre-trip notification aspect is part of a proposed collection of information subject to approval by the OMB under the PRA. The remaining aspects of the requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the PRA). These requirements would not apply to purse seine vessels because they are not allowed to transship at sea, and they generally would not apply to troll vessels because for transshipments involving troll-caught fish, an observer would in most cases be required on the receiving vessel, not the offloading vessel. If a U.S. troll vessel were used to receive a transshipment, then the requirements to notify NMFS in advance of the trip and to carry an observer would apply to the troll vessel, and if the receiving vessel were less than 33 meters in length, the required observer could be carried by either the offloading or receiving vessel. However, based on the history of the fishery, in which all recorded transshipments have been made to large foreign-flagged carriers, these cases are expected to be rare. Thus, except in rare cases, only the longline fleet would be subject to these requirements, and the estimated total number of affected entities is approximately 170, as described above.

Pre-trip notification: It is estimated that each pre-trip notification would require 1 minute of labor and about $1 in communication costs. The value of the required labor is estimated to be $60 per hour. The estimated cost of compliance is therefore about $2 per notification. Fishing vessel operators might not always know in advance of a fishing trip whether they will need or want to transship at sea during that trip. Consequently, they might sometimes make a pre-trip notification, and carry a WCPFC observer, on trips that ultimately do not involve transshipments at sea. In other words, a pre-trip notification is expected to be made for each trip during which the fishing vessel operator wants to maintain the opportunity to transship at sea, and the number of such occasions might be greater than the number of fishing trips during which at-sea transshipments actually occur. The number of pre-trip notifications cannot be predicted with any certainty, but for the purpose of this analysis each longline vessel is expected to make a pre-trip notification between zero and approximately four times per year. The estimated annual cost of compliance is therefore between $0 for a vessel that does not make any pre-transshipment notifications to about $8 for a vessel that makes four pre-transshipment notifications per year.

Requirement to carry observer: It is assumed that the Observer Program administered by NMFS will continue to be authorized by the WCPFC to be part of the WCPFC ROP. Thus, observers deployed by NMFS pursuant to regulations at 50 CFR Part 665 would be deemed to be WCPFC observers deployed in accordance with this new requirement. As such, vessel owners and operators would bear additional compliance costs under this requirement only in cases where an observer is required under this rule but a WCPFC or NMFS observer is not required under other regulations. For example, the shallow-set and deep-set sectors of the Hawaii longline fleet are subject to observer coverage rates of 100 and approximately 20 percent (in terms of fishing trips), respectively. The compliance cost for a vessel that engages solely in shallow-set trips is therefore expected to be nil. For deep-setting vessels, on any given fishing trip during which a vessel operator wants to maintain the opportunity to transship at sea there is a 20 percent chance that an observer will be deployed under other regulations, in which case this new requirement would bring no new

compliance costs. If the vessel is used to offload a transshipment to a longline vessel that is on a declared shallow-set trip, the observer deployed on the receiving vessel would satisfy this proposed requirement, and again, the compliance cost for the offloading vessel (as well as for the receiving vessel) would be nil. It is not possible to project with any certainty the frequency or combinations of the trip types that longline vessels will be engaged in when they transship. For the purpose of estimating compliance costs here, it is roughly projected that any given longline vessel will request an observer between 0 and 4 fishing trips per year, and that the proposed observer requirement will be satisfied by current regulations (i.e., that there will be no new compliance costs) for 25 percent of those 0 to 4 fishing trips per year. In the remaining 75 percent of the cases; that is, for trips on which an observer is deployed under this new requirement, the affected entity would be responsible for the costs associated with providing the observer with food, accommodations, and medical facilities. These costs are expected to be about $20 per day (this is consistent with the amounts reimbursed by NMFS to owners of longline vessels for observer subsistence costs pursuant to 50 CFR 665.808(i)(1)). Based on deep-set fishing trip lengths by the Hawaii longline fleet during 2009 and 2010, each affected longline fishing trip is expected to be about 24 days in duration, on average. The estimated annual cost of compliance for longline vessels is therefore between $0 for a vessel that does not request any observers to transship at sea to about $1,440 for a vessel that requests observers to transship at sea four times per year. As described above, vessels other than longline vessels would not be expected to bear any observer-related compliance costs except in rare cases. In those cases, as for longline vessels, the direct cost of compliance is expected to be about $20 for each day that an observer is carried. In addition to the direct costs of accommodating observers, as described above, owners and operators of vessels that engage in transshipment would be responsible for ensuring that an observer is present, even when the requirement to carry an observer falls on the other vessel involved in the transshipment. This would bring indirect compliance costs. Vessel owners and operators would also be faced with having to decide in advance of any given trip whether or not to request an observer. Because they may not always know in advance of trip whether they will want or need to transship during that trip, having to decide in advance would be burdensome and bring indirect costs associated with the risk of making the ''wrong'' decision. The magnitude of these indirect compliance costs cannot be predicted.

Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(4) Restrictions on vessels with which transshipping and bunkering may be conducted: This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the PRA). The requirement to transship with or be bunkered by a vessel only if such vessel is authorized in accordance with WCPFC decisions would apply to owners and operators of any vessel used for transshipment of HMS in the Convention Area. Accordingly, it would apply to all the vessels identified above (170 longline, 36 purse seine, and 26 troll). The costs of compliance are expected to be nil or minor because the requirement is not expected to be constraining. The vessels with which transshipping and bunkering may take place include any vessel flagged by a WCPFC Member or Cooperating Non-Member, vessels on the WCPFC Record of Fishing Vessels (i.e., any vessel authorized to be used for fishing in the Convention Area in areas outside the jurisdiction of its flag State (e.g., on the high seas or in the areas of jurisdiction of coastal States that are not the flag State)), and vessels on the Interim Register, placement on which requires a nomination by a member of the WCPFC and an annual fee of $2,500. It is expected to be a rare occurrence that a vessel other than those types would be active in the Convention Area.

Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(5) Notice of entry or exit for the Eastern SMA: This requirement is part of a proposed collection of information subject to approval by the Office of Management and Budget (OMB) under the PRA. The requirement to provide notice in advance of each entry into and each exit out of the Eastern SMA would apply to the owners and operators of any vessel used for commercial fishing for HMS in the Convention Area or which has, or is required to have, a WCPFC Area Endorsement. Accordingly, it would apply to all the vessels identified above (170 longline, 36 purse seine, and 26 troll). It is estimated that each notice would require about 15 minutes of labor and no more than $1 in communication costs. The value of the required labor is estimated to be $60 per hour. The estimated cost of compliance is therefore about $16 per notice. The estimated compliance costs per affected entity are described below, by vessel type:

Each longline vessel is expected to enter the Eastern SMA between zero and approximately four times per year (and exit the same number of times). The estimated annual cost of compliance is therefore between $0 for a vessel that does not enter the pocket to about $128 for a vessel that enters the Eastern SMA four times per year and exits the Eastern SMA four times per year.

Each purse seine vessel is expected to enter the Eastern SMA between zero and approximately two times per year (and exit the same number of times). The estimated annual cost of compliance is therefore between $0 for a vessel that does not enter the pocket to about $64 for a vessel that enters the Eastern SMA two times per year and exits the Eastern SMA two times per year.

Each troll vessel is expected to enter the Eastern SMA between zero and approximately two times per year (and exit the same number of times). The estimated annual cost of compliance is therefore between $0 for a vessel that does not enter the pocket to about $64 for a vessel that enters the Eastern SMA two times per year and exits the Eastern SMA two times per year.

Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(6) Purse seine discard report: This requirement is part of a proposed collection of information subject to approval by the Office of Management and Budget (OMB) under the PRA. The requirement to submit a report to the WCPFC any time that tuna are discarded at sea would apply to the owners and operators of any purse seine vessel used for commercial fishing for HMS in the Convention Area. Accordingly, it would apply to an estimated 36 purse seine vessels, as identified above. It is estimated that each report would require about 30 minutes of labor and no more than $1 in communication costs. The value of the required labor is estimated to be $60 per hour. The estimated cost of compliance is therefore about $31 per report. Based on the purse seine fleet's discard patterns during 2008, the most recent year for which complete data are available, each purse seine vessel is expected to discard tuna at sea and have to report on such discards approximately 17 times per

year, on average. The estimated annual cost of compliance is therefore $527 per vessel per year, on average.

Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(7) Other requirements: The net-sharing restrictions and reporting requirement and the removal of the termination date (December 31, 2012) of the current catch retention requirements would not impose any new reporting or recordkeeping requirements (within the meaning of the PRA), but the net sharing reporting requirement would modify the information required to be reported under a current information collection (OMB control number 0648–0218). Specifically, when fish are shared, the owners and operators of both vessels involved would have to indicate on their respective catch report forms (also known as RPLs) that, for that set, a specified amount of fish were shared with a specified other vessel. This reporting requirement is not expected to add to the current reporting burden or bring other compliance costs.

The proposed restrictions on net-sharing—specifically, that it may be done only on the last set and only between U.S. vessels, would apply to the owner and operator of any purse seine vessel used for commercial fishing for HMS in the Convention Area. Accordingly, it would apply to an estimated 36 purse seine vessels, as identified above. Because the main motivation for net sharing is to avoid discarding fish that cannot be accommodated in fish wells that are full, vessel operators are likely to want to net-share only on the last set. Accordingly, the last-set restriction is expected to bring little, if any, compliance costs. The restriction on net-sharing only between U.S. vessels would be constraining and therefore bring costs, but because data are not available on the frequency of net sharing or the flags of vessels with which net-sharing occurs, the magnitude of those costs cannot be predicted.

Removing the termination date of the current catch retention requirements would bring an extension of the costs to purse seine fishing entities associated with having to fill well space with less valuable, and in some cases, unmarketable, product. Those costs cannot be quantified. The costs would likely be different for vessels that tend to operate out of Pago Pago and deliver their catch to the canneries in Pago Pago versus vessels that transship most of their catch to other vessels. For vessels in the former category, which have to steam relatively far from the fishing grounds in order to land their fish, a fishing trip typically only ends when the fish holds are full in order to maximize revenue during a given trip. Revenues and profits for these vessels are therefore strongly dependent on the size of their fish wells and on the value of fish per unit of well space. There have been occasions when the canneries have charged vessel operators to unload small fish. If that occurs with small fish that under this proposed rule are retained that otherwise would not be, vessel owners and operators would bear direct economic costs. For vessels that tend to transship their catches at ports near the fishing grounds, well space is a less important constraint on profits, so the economic impacts of this requirement on these vessels would likely be less.

Fulfillment of these requirements is not expected to require any professional skills that the vessel owners and operators do not already possess.

A number of Federal rules overlap with the proposed rule, as described below for each of the seven elements of the proposed rule:

(1) Transshipment reporting requirements: For purse seine vessels, there are two current transshipment reporting requirements under the SPTA that overlap with the proposed reporting requirement in that much of the information required under the proposed report is already required under the current reports. The first requirement is at 50 CFR 300.34(c)(2) and applies to all unloadings, including transshipments. The second is at 50 CFR 300.34(c)(9) and applies only to transshipments. The timing requirements and the recipients of the current and proposed reports differ in some respects. The proposed report would have to be submitted to the NMFS Pacific Islands Regional Administrator within 14 days after completion of the transshipment, except in the case of at-sea transshipments, which would be allowed only in specified emergency circumstances, and for which the report would have to be submitted to the NMFS Pacific Islands Regional Administrator within 10 days of completion of the transshipment. A copy of the current report under 50 CFR 300.34(c)(2) must be received by NMFS within two days of completion of the transshipment. In addition, the original report must be submitted to the FFA, as Treaty Administrator on behalf of the 16 Pacific Island Parties (PIP) to the Treaty, within 14 days of completion of the transshipment (this timing is consistent with the timing of the submission of the original of the proposed report). The current report under 50 CFR 300.34(c)(9) must be submitted to the FFA and to the PIP in whose jurisdiction the transshipment took place. It has no regulatory due date. The current reports would not fully satisfy the objectives of the proposed report—that is, they do not collect all the information needed under WCPFC CMM 2009–06. Furthermore, the two current reports under the SPTA must be sent in particular formats that are specified under the Treaty and cannot be changed in U.S. regulations unless and until the Treaty is amended accordingly. For these reasons, the proposed requirement not only overlaps with the two current SPTA reporting requirements but would also duplicate them to some extent, unless and until the Treaty is amended in such a way that the duplication can be removed.

For longline vessels, the proposed reporting requirement overlaps with a current transshipment reporting requirement at 50 CFR 665.14(c). The current requirement applies only to vessels that receive longline-caught fish and subsequently land or transship the fish in the western Pacific region. The timing and recipient of the proposed report would be the same as those for the current report (submit to the NMFS Pacific Islands Regional Administrator within 72 hours of the vessel reaching port after the transshipment). The form used for the proposed requirement would be designed to accommodate the current requirement and would replace the form used for the current requirement, so although the two requirements would overlap, there would be no duplication in the reporting burden.

For troll vessels, the proposed reporting requirement overlaps with a current transshipment reporting requirement at 50 CFR 660.708(a), which is for catch and effort reporting generally and applies to operators of HMS fishing vessels operating for commercial fishing in the portion of the EEZ off the U.S. west coast and in adjacent high seas areas. The current reporting form used by albacore troll fishermen requires that the date, receiving vessel, and amount transshipped be recorded for any at-sea transshipment. The timing of the proposed report would be the same as that for the current report (submit to NMFS within 30 days of the transshipment). The proposed requirement would satisfy the current reporting requirement, but because the current requirement applies to a much larger group of fishermen than the proposed requirement, and because the transshipment-related information required under the current report is

relatively limited and a small part of the catch/effort reporting form, it would not be practical to remove the duplication in the two requirements.

(2) Prior notice for high seas transshipments and emergency transshipments: For purse seine vessels only, the current requirement under the SPTA to provide notification in advance of each transshipment (50 CFR 300.34(c)(5)) overlaps with the proposed pre-transshipment notification requirement, but only in the case of emergency at-sea transshipments (because purse seine vessels are not allowed to transship at sea otherwise). The substance, timing, and recipients of the proposed and current notifications differ. Because of these differences, it would not be practical to remove the duplication between the two notification requirements.

(3) Observer coverage for transshipments at sea: The pre-trip notification aspect of this proposed requirement, which, except in rare cases would apply only to longline vessels, overlaps with an current pre-trip notification requirement for longline vessels at 50 CFR 665.803(a). The current requirement applies in the case of all fishing trips, and is used by NMFS in part to notify the vessel operator whether the vessel must carry an observer on that trip (observers are deployed according to a sampling scheme). The proposed notification would apply only in the case that a vessel operator wants to carry an observer in order to maintain the opportunity to transship at sea on a given fishing trip. Thus, although the two requirements would overlap, there would be no duplication in the substance of the reports. Furthermore, the timing and format of the proposed requirement would be such that vessel operators could provide the proposed notification at the same time (e.g., during the same phone call) that they provide the current notification. For vessel types other than longline vessels, no duplicating, overlapping or conflicting Federal regulations have been identified.

The proposed requirement that vessels carry an observer in certain situations involving transshipments would overlap for longline vessels with current observer requirements at 50 CFR 665.808 (for longline vessels) and 50 CFR 300.215 (for vessels used to fish for HMS on the high seas in the Convention Area). The proposed requirement would be such that carrying an observer under any of the current observer requirements would satisfy the proposed requirement, so there would be no duplication among the requirements. For purse seine vessels and troll vessels, there would be no overlapping, duplicative, or conflicting requirements except in the expectedly rare case that a troll vessel would be required to carry an observer, in which case the proposed requirement overlaps with the requirements at 50 CFR 660.719 (for west coast HMS vessels) and 50 CFR 300.215 (for vessels used to fish for HMS on the high seas in the Convention Area). Regarding the latter regulation, compliance with the current requirement would satisfy the proposed requirement, so there would be no duplication in the requirements. Under the former regulation, west coast-based troll vessels must carry NMFS observers when directed to do so by NMFS, but NMFS has not been deploying any observers on troll vessels under that requirement. However, because observers deployed by NMFS are currently considered WCPFC observers, as the program has completed the required authorization process to become part of the WCPFC ROP, this proposed requirement would not duplicate that requirement—the same observer could be used to fulfill both requirements.

(4) Restrictions on vessels with which transshipping and bunkering may be conducted: No duplicating, overlapping or conflicting Federal regulations have been identified.

(5) Notice of entry or exit for Eastern SMA: For purse seine vessels only, the current requirement under the SPTA to provide notification upon entry or exit into the EEZ of any PIP (50 CFR 300.34(c)(6)) overlaps with the proposed notification requirement, but only for those EEZs that border the Eastern SMA; that is, the EEZs of Kiribati, Cook Islands, and French Polynesia. The information required in the two notifications differs slightly. The current notification does not have a specific timing requirement. The recipients of the two notifications differ in that the current one must be sent to an authority of the relevant PIP while the proposed notification would have to be sent to the WCPFC and to NMFS. The current notification cannot be modified in any way unless and until the Treaty is amended accordingly, so the current notification could not be used to satisfy this proposed notification requirement, nor vice versa, so there would be some duplication between the two requirements.

For vessel types other than purse seine vessels, no duplicating, overlapping or conflicting Federal regulations have been identified.

(6) Purse seine discard report: This reporting requirement, which would apply only to purse seine vessels, would overlap with a current SPTA reporting requirement at 50 CFR 300.34(c)(1). The current requirement to maintain and submit ''catch report forms,'' also known as ''Regional Purse Seine Logsheets'' or ''RPLs'', calls for information on fishing effort and catches, including information on the amount of fish, by species, that is discarded each day, including the reason for each such discard. The timing requirements and the recipients of the current and proposed reports differ in some respects. The proposed report would have to be submitted to the WCPFC and to NMFS within 48 hours after each discard event. The current report must be submitted to and received by NMFS within two days after the vessel next reaches port. In addition, it must be submitted to the FFA, as Treaty Administrator on behalf of the PIP, within 14 days after the vessel next reaches port. Furthermore, the current report must be sent on a particular form that is specified under the Treaty and cannot be changed in U.S. regulations unless and until the Treaty is amended accordingly. Because of these differences, the proposed requirement not only overlaps with the current SPTA requirement but would also duplicate it to a large extent, unless and until the Treaty is amended in such a way that the duplication can be removed.

(7) Net-sharing restrictions and reporting: No duplicating, overlapping or conflicting Federal regulations have been identified.

NMFS has attempted to identify alternatives that would accomplish the objectives of the Act and minimize any significant economic impact of the proposed rule on small entities. The alternative of taking no action at all was rejected because it would fail to accomplish the objectives of the WCPFC Implementation Act. As a Contracting Party to the Convention, the United States is required to implement the decisions of the WCPFC. Consequently, NMFS has limited discretion as to how to implement those decisions.

With respect to element (1), transshipment reporting requirements, one alternative would be to impose a uniform timeframe for submission of the report; to satisfy all current requirements and the provisions of CMM 2009–06, it would have to be submitted to NMFS within 10 calendar days after completion of the transshipment. This would be more burdensome than the proposed requirement for certain types of fishing vessels and is not preferred for that reason. NMFS has not identified any alternatives that would be less burdensome than the proposed

requirement and that would accomplish the objectives of the WCPFC Implementation Act.

With respect to element (2), prior notice for high seas transshipments and emergency transshipments, one alternative would be to give affected entities the option of either providing the notice of high seas transshipment to NMFS at least one business day plus 36 hours in advance of the transshipment (i.e., 60 hours before the transshipment), or, as under the proposed rule, providing the notice directly to the WCPFC at least 36 hours in advance of the transshipment, with a copy to NMFS. This flexibility could relieve the burden for some entities and/or situations; specifically, in cases where it is less burdensome to send the notification to NMFS than to the WCPFC. Under this alternative, if a vessel operator exercises the first option, NMFS would have to forward the notification to the WCPFC within one business day, so this alternative would bring some additional administrative costs to NMFS. This alternative would also have the disadvantage of being more complex and possibly more confusing to affected entities than the proposed rule (under which there would be a single timeframe and single recipient). For these reasons, and because NMFS believes that the benefits of the flexibility afforded to affected entities by this alternative would be minor, this alternative is not preferred.

With respect to element (3), observer coverage for transshipments at sea, NMFS has not identified any alternatives that would be less burdensome than the proposed requirement and that would accomplish the objectives of the WCPFC Implementation Act. The only action alternative considered for this element is the alternative being proposed in this rule.

With respect to element (4), restrictions on vessels with which transshipping and bunkering may be conducted, NMFS has not identified any alternatives that would be less burdensome than the proposed requirement and that would accomplish the objectives of the WCPFC Implementation Act. The only action alternative considered for this element is the alternative being proposed in this rule.

With respect to element (5), notice of entry or exit for Eastern SMA, NMFS has not identified any alternatives that would be less burdensome than the proposed requirement and that would accomplish the objectives of the WCPFC Implementation Act. The only action alternative considered for this element is the alternative being proposed in this rule.

With respect to element (6), the purse seine discard report, NMFS has not identified any alternatives that would be less burdensome than the proposed requirement and that would accomplish the objectives of the WCPFC Implementation Act. The only action alternative considered for this element is the alternative being proposed in this rule.

With respect to element (7), net-sharing restrictions and reporting, one alternative would be to allow U.S. to net-share to foreign-flagged vessels, and a second would be to allow U.S. vessels to net-share both to and from foreign vessels. Under both these alternatives, net-sharing would be allowed only on the last set. Alternatives to allow net-sharing on other than the last set would not be consistent with WCPFC decisions, so were not considered. Both alternatives identified above would be less restrictive than the proposed rule and thus bring lower compliance costs. The first alternative would make it difficult to ensure consistent counting of catches—for example, the shared catch might be logged as catch by both the U.S. catcher vessel and the foreign vessel with which the catch is shared. The alternative is not preferred for that reason. The second alternative would have the same shortcoming and would also be very difficult to enforce, as the United States would have limited ability to determine whether a foreign vessel complied with the last-set condition. The alternative is not preferred for those reasons.

For each element, NMFS also considered the no-action alternative, or status quo situation in which the provisions of the proposed rule would not be implemented. However, as stated above, the no-action alternative would not accomplish the objectives of the WCPFC Implementation Act and was rejected for that reason.

Paperwork Reduction Act

This proposed rule contains collection-of-information requirements subject to review and approval by the OMB under the PRA. These requirements have been submitted to the OMB for approval. The public reporting burdens for each of the requirements are estimated as follows: Transshipment reporting: 60 minutes per response, on average; prior notice for high seas transshipments and emergency transshipments: 15 minutes per response, on average; pre-trip notification for the purpose of deploying observers: 1 minute per response, on average; notice of entry or exit for Eastern SMA: 15 minutes per response, on average; purse seine discard report: 30 minutes per response, on average. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the proposed collection of information to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

This proposed rule also contains a collection-of-information requirement subject to the PRA that has been approved by OMB under control number 0648–0218, ''South Pacific Tuna Act'' (the net-sharing reporting requirement). The public reporting burden for the Catch Report Form under that collection-of-information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: February 9, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

2. In § 300.211, definitions of ''Cooperating Non-Member,'' ''Eastern High Seas Special Management Area,'' ''Net sharing,'' ''On board,'' ''WCPFC Interim Register of non-Member Carrier and Bunker Vessels,'' and ''WCPFC Record of Fishing Vessels'' are added, in alphabetical order, and the definition of ''Transshipment'' is revised, to read as follows:

§ 300.211 Definitions.

* * * * *

Cooperating Non-Member means a non-Member of the Commission that has been accorded Cooperating Non-Member status by the Commission at the Commission's most recent annual meeting.

Eastern High Seas Special Management Area means the area of the high seas within the area bounded by the four lines connecting, in the most direct fashion, the coordinates specified as follows: 11° S. latitude and 161° W. longitude; 11° S. latitude and 154° W. longitude; 16° S. latitude and 154° W. longitude; and 16° S. latitude and 161° W. longitude.

* * * * *

Net sharing means the transfer of fish that have not yet been loaded on board any fishing vessel from the purse seine net of one vessel to another fishing vessel. Fish shall be considered to be on board a fishing vessel once they are on a deck or in a hold, or once they are first lifted out of the water by the vessel.

* * * * *

Transshipment means the unloading of fish from on board one fishing vessel and its direct transfer to, and loading on board, another fishing vessel, either at sea or in port. Fish shall be considered to be on board a fishing vessel once they are on a deck or in a hold, or once they are first lifted out of the water by the vessel. Net sharing is not a transshipment.

* * * * *

WCPFC Interim Register of Non-Member Carrier and Bunker Vessels means, for the purposes of this subpart, the WCPFC Interim Register of non-Member Carrier and Bunker Vessels as established in the decisions of the WCPFC and maintained on the WCPFC's Web site at *http://www.wcpfc.int/.*

* * * * *

WCPFC Record of Fishing Vessels means, for the purposes of this subpart, the WCPFC Record of Fishing Vessels as established in the decisions of the WCPFC and maintained on the WCPFC's Web site at *http://www.wcpfc.int/.*

* * * * *

3. Section 300.215 is revised to read as follows:

§ 300.215 Observers.

(a) *Applicability.* This section applies to the following categories of fishing vessels:

(1) Any fishing vessel of the United States with a WCPFC Area Endorsement.

(2) Any fishing vessel of the United States for which a WCPFC Area Endorsement is required.

(3) Any fishing vessel of the United States used for commercial fishing that receives or offloads in the Convention Area a transshipment of HMS at sea.

(b) *Notifications.* The owner or operator of a vessel required to carry a WCPFC observer under § 300.215(d) during a given fishing trip must ensure the provision of notice to the Pacific Islands Regional Administrator at least 72 hours (exclusive of weekends and Federal holidays) before the vessel leaves port on the fishing trip, indicating the need for an observer. The notice must be provided to the office or telephone number designated by the Pacific Islands Regional Administrator and must include the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and a telephone number at which the owner, operator, or a designated agent may be contacted during the business day (8 a.m. to 5 p.m. Hawaii Standard Time). If applicable, notice may be provided in conjunction with the notice required under § 665.803(a) of this title.

(c) *Accommodating observers.* (1) Fishing vessels specified in paragraphs (a)(1) and (a)(2) of this section must carry, when directed to do so by NMFS, a WCPFC observer on fishing trips during which the vessel at any time enters or is within the Convention Area. The operator and each member of the crew of the fishing vessel shall act in accordance with paragraphs (c)(3), (c)(4), and (c)(5) of this section with respect to any WCPFC observer.

(2) Fishing vessels specified in paragraph (a)(3) of this section must carry an observer when required to do so under § 300.215(d). The operator and each member of the crew of the fishing vessel shall act in accordance with paragraphs (c)(3), (c)(4), and (c)(5) of this section with respect to any WCPFC observer.

(3) The operator and crew shall allow and assist WCPFC observers to:

(i) Embark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator;

(ii) Have access to and use of all facilities and equipment as necessary to conduct observer duties, including, but not limited to: Full access to the bridge, the fish on board, and areas which may be used to hold, process, weigh and store fish; full access to the vessel's records, including its logs and documentation, for the purpose of inspection and copying; access to, and use of, navigational equipment, charts and radios; and access to other information relating to fishing;

(iii) Remove samples;

(iv) Disembark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator; and

(v) Carry out all duties safely.

(4) The operator shall provide the WCPFC observer, while on board the vessel, with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel, at no expense to the WCPFC observer.

(5) The operator and crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass or interfere with WCPFC observers in the performance of their duties, or attempt to do any of the same.

(d) *Transshipment observer coverage*—(1) *Receiving vessels.* Any fishing vessel of the United States used for commercial fishing that receives in the Convention Area a transshipment of HMS at sea must have a WCPFC observer on board during such transshipment unless at least one of the following sets of conditions applies:

(i) The vessel is less than or equal to 33 meters in registered length, the transshipment does not include any fish caught by purse seine gear, the transshipment does not include any frozen fish caught by longline gear, and, during the transshipment, there is a WCPFC observer on board the vessel that offloads the transshipment;

(ii) Prior to January 1, 2013, the vessel is greater than 33 meters in registered length and the transshipment is only of fish caught by troll gear and/or pole-and-line gear;

(iii) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught in such waters; or

(iv) The transshipment is an emergency, as specified under § 300.216(b)(4).

(2) *Offloading vessels.* Any fishing vessel of the United States used for commercial fishing that offloads a transshipment of HMS at sea in the Convention Area must have a WCPFC observer on board, unless one or more of the following conditions apply:

(i) The vessel that receives the transshipment has a WCPFC observer on board;

(ii) The vessel that receives the transshipment is greater than 33 meters in registered length;

(iii) The transshipment includes fish caught by purse seine gear;

(iv) The transshipment includes frozen fish caught by longline gear;

(v) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught in such waters; or

(vi) The transshipment is an emergency, as specified under § 300.216(b)(4).

(e) *Related observer requirements.* Observers deployed by NMFS pursuant to regulations issued under other statutory authorities on vessels used for fishing for HMS in the Convention Area will be deemed by NMFS to have been deployed pursuant to this section.

4. Section 300.216 is revised to read as follows:

§ 300.216 Transshipping, bunkering and net sharing.

(a) *Transshipment monitoring.* [Reserved]

(b) *Restrictions on transshipping and bunkering.*

(1) *Restrictions on transshipments involving purse seine fishing vessels.*

(i) Fish may not be transshipped from a fishing vessel of the United States equipped with purse seine gear at sea in the Convention Area, and a fishing vessel of the United States may not be used to receive a transshipment of fish from a fishing vessel equipped with purse seine gear at sea in the Convention Area.

(ii) Fish caught in the Convention Area may not be transshipped from a fishing vessel of the United States equipped with purse seine gear at sea, and a fishing vessel of the United States may not be used to receive a transshipment of fish caught in the Convention Area from a fishing vessel equipped with purse seine gear at sea.

(2) *Restrictions on at-sea transshipments.* If a transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught within such waters, this paragraph does not apply.

(i) The owner and operator of a fishing vessel of the United States used for commercial fishing that offloads or receives a transshipment of HMS at sea in the Convention Area must ensure that a WCPFC observer is on board at least one of the vessels involved in the transshipment for the duration of the transshipment, unless the vessel receiving the transshipment is subject to the provisions of § 300.215(d)(1)(ii).

(ii) A fishing vessel of the United States used for commercial fishing that receives transshipments of HMS at sea in the Convention Area shall not receive such transshipments from more than one vessel at a time unless there is a separate WCPFC observer available on either the offloading or receiving vessel to monitor each additional transshipment.

(3) *General restrictions on transshipping and bunkering*—

(i) *Transshipment.* Only fishing vessels that are authorized to be used for fishing in the EEZ may engage in transshipment in the EEZ. Any fishing vessel of the United States used for commercial fishing shall not be used to offload or receive a transshipment of HMS in the Convention Area unless:

(A) The other vessel involved in the transshipment is flagged to a Member or Cooperating Non-Member of the Commission;

(B) The other vessel involved in the transshipment is on the WCPFC Record of Fishing Vessels;

(C) The other vessel involved in the transshipment is on the WCPFC Interim Register of Non-Member Carrier and Bunker Vessels; or

(D) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught within such waters.

(ii) *Bunkering, supplying and provisioning.* Only fishing vessels that are authorized to be used for fishing in the EEZ may engage in bunkering in the EEZ. A fishing vessel of the United States used for commercial fishing for HMS shall not be used to provide bunkering, to receive bunkering, or to exchange supplies or provisions with another vessel in the Convention Area unless:

(A) The other vessel involved in the bunkering or exchange of supplies or provisions is flagged to a Member or a Cooperating Non-Member of the Commission;

(B) The other vessel involved in the bunkering or exchange of supplies or provisions is on the WCPFC Record of Fishing Vessels; or

(C) The other vessel involved in the bunkering or exchange of supplies or provisions is on the WCPFC Interim Register of Non-Member Carrier and Bunker Vessels.

(4) *Emergency transshipments.* The restrictions in paragraphs (b)(1), (b)(2), and (b)(3)(i) of this section shall not apply to a transshipment conducted under circumstances of force majeure or other serious mechanical breakdown that could reasonably be expected to threaten the health or safety of the vessel or crew or cause a significant financial loss through fish spoilage.

(c) *Net sharing restrictions.* (1) The owner and operator of a fishing vessel of the United States shall not conduct net sharing in the Convention Area unless all of the following conditions are met:

(i) The vessel transferring the fish is a fishing vessel of the United States equipped with purse seine gear;

(ii) The vessel transferring the fish has insufficient well space for the fish;

(iii) The vessel transferring the fish engages in no additional purse seine sets during the remainder of the fishing trip; and

(iv) The vessel accepting the fish is a fishing vessel of the United States equipped with purse seine gear.

(2) Only fishing vessels of the United States that are authorized to be used for fishing in the EEZ may engage in net sharing in the EEZ, subject to the provisions of paragraph (c)(1) of this section.

5. In § 300.218, paragraph (b) is revised and paragraphs (c), (d), (e) and (f) are added to read as follows:

§ 300.218 Reporting and recordkeeping requirements.

* * * * *

(b) *Transshipment reports.* The owner and operator of any fishing vessel of the

United States used for commercial fishing that offloads or receives a transshipment of HMS in the Convention Area, or a transshipment anywhere of HMS caught in the Convention Area, must ensure that a transshipment report for the transshipment is completed, using a form that is available from the Pacific Islands Regional Administrator, and recording all the information specified on the form. The owner and operator of the vessel must ensure that the transshipment report is completed and signed within 24 hours of the completion of the transshipment, and must ensure that the report is submitted as follows:

(1) For vessels licensed under § 300.32, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator by the due date specified at § 300.34(c)(2) for submitting the transshipment logsheet form to the Administrator as defined at § 300.31.

(2) For vessels registered for use under § 660.707 of this title, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator by the due date specified for the logbook form at § 660.708 of this title.

(3) For vessels subject to the requirements of § 665.14(c) and § 665.801(e) of this title, and not subject to the requirements of paragraphs (b)(1) or (b)(2) of this section, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator by the due date specified at § 665.14(c) of this title for submitting transshipment logbooks to the Pacific Islands Regional Administrator for landings of western Pacific pelagic management unit species.

(4) For all transshipments on the high seas and emergency transshipments that meet the conditions described in § 300.216(b)(4), including transshipments involving the categories of vessels specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section, the report is submitted by fax or email to the address specified by the Pacific Islands Regional Administrator no later than 10 calendar days after completion of the transshipment. The report may be submitted with or without signatures so long as the original transshipment report with signatures is submitted to the address specified by the Pacific Islands Regional Administrator no later than 15 calendar days after the vessel first enters into port or 15 calendar days after completion of the transshipment for emergency transshipments in port.

(5) For all other transshipments at sea, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator no later than 72 hours after the vessel first enters into port.

(6) For all other transshipments in port, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator no later than 72 hours after completion of the transshipment.

(c) *Exceptions to transshipment reporting requirements.* Paragraph (b) of this section shall not apply to a transshipment that takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught within such waters.

(d) *Transshipment notices*—(1) *High seas transshipments.* The owner and operator of a fishing vessel of the United States used for commercial fishing that offloads or receives a transshipment of HMS on the high seas in the Convention Area, or a transshipment of HMS caught in the Convention Area anywhere on the high seas, and not subject to the requirements of paragraph (d)(2) of this section, must ensure that a notice is submitted to the Commission by fax or email at least 36 hours prior to the start of such transshipment at the address specified by the Pacific Islands Regional Administrator, and that a copy of that notice is submitted to NMFS at the address specified by the Pacific Islands Regional Administrator at least 36 hours prior to the start of the transshipment. The notice must be reported in the format provided by the Pacific Islands Regional Administrator and must contain the following information:

(i) The name of the offloading vessel.

(ii) The vessel identification markings located on the hull or superstructure of the offloading vessel.

(iii) The name of the receiving vessel.

(iv) The vessel identification markings located on the hull or superstructure of the receiving vessel.

(v) The expected amount, in metric tons, of fish product to be transshipped, broken down by species and processed state.

(vi) The expected date or dates of the transshipment.

(vii) The expected location of the transshipment, including latitude and longitude to the nearest tenth of a degree.

(viii) An indication of which one of the following areas the expected transshipment location is situated: high seas inside the Convention Area; high seas outside the Convention Area; or an area under the jurisdiction of a particular nation, in which case the nation must be specified.

(ix) The expected amount of HMS to be transshipped, in metric tons, that was caught in each of the following areas: inside the Convention Area, on the high seas; outside the Convention Area, on the high seas; and within areas under the jurisdiction of particular nations, with each such nation and the associated amount specified. This information is not required if the reporting vessel is the receiving vessel.

(2) *Emergency transshipments.* The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS that offloads or receives a transshipment of HMS in the Convention Area, or a transshipment of HMS caught in the Convention Area anywhere, that is allowed under § 300.216(b)(4) but would otherwise be prohibited under the regulations in this subpart, must ensure that a notice is submitted by fax or email to the Commission at the address specified by the Pacific Islands Regional Administrator and a copy is submitted to NMFS at the address specified by the Pacific Islands Regional Administrator within twelve hours of the completion of the transshipment. The notice must be reported in the format provided by the Pacific Islands Regional Administrator and must contain the following information:

(i) The name of the offloading vessel.

(ii) The vessel identification markings located on the hull or superstructure of the offloading vessel.

(iii) The name of the receiving vessel.

(iv) The vessel identification markings located on the hull or superstructure of the receiving vessel.

(v) The expected or actual amount, in metric tons, of fish product transshipped, broken down by species and processed state.

(vi) The expected or actual date or dates of the transshipment.

(vii) The expected or actual location of the transshipment, including latitude and longitude to the nearest tenth of a degree.

(viii) An indication of which one of the following areas the expected or actual transshipment location is situated: high seas inside the Convention Area; high seas outside the Convention Area; or an area under the jurisdiction of a particular nation, in which case the nation must be specified.

(ix) The amount of HMS to be transshipped, in metric tons, that was caught in each of the following areas: inside the Convention Area, on the high seas; outside the Convention Area, on

the high seas; and within areas under the jurisdiction of particular nations, with each such nation and the associated amount specified. This information is not required if the reporting vessel is the receiving vessel.

(x) The reason or reasons for the emergency transshipment (i.e., a transshipment conducted under circumstances of force majeure or other serious mechanical breakdown that could reasonably be expected to threaten the health or safety of the vessel or crew or cause a significant financial loss through fish spoilage).

(3) *Location of high seas and emergency transshipments.* A high seas or emergency transshipment in the Convention Area or of HMS caught in the Convention Area anywhere subject to the notification requirements of paragraph (d)(1) or (d)(2) must take place within 24 nautical miles of the location for the transshipment indicated in the notice submitted under paragraph (d)(1)(vii) or (d)(2)(vii) of this section.

(e) *Purse seine discard reports.* The owner and operator of any fishing vessel of the United States equipped with purse seine gear must ensure that a report of any at-sea discards of any bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), or skipjack tuna (*Katsuwonus pelamis*) caught in the Convention Area is completed, using a form that is available from the Pacific Islands Regional Administrator, and recording all the information specified on the form. The report must be submitted within 48 hours after any discard to the Commission by fax or email at the address specified by the Pacific Islands Regional Administrator. A copy of the report must be submitted to NMFS at the address specified by the Pacific Islands Regional Administrator by fax or email within 48 hours after any such discard. A hard copy of the report must be provided to the observer on board the vessel, if any.

(f) *Net sharing reports*—(1) *Transferring vessels.* The owner and operator of a fishing vessel of the United States equipped with purse seine gear that transfers fish to another fishing vessel equipped with purse seine gear under § 300.216(c) shall ensure that the amount, by species, of fish transferred, as well as the net sharing activity, is recorded on the catch report forms maintained pursuant to § 300.34(c)(1), in the format specified by the Pacific Islands Regional Administrator.

(2) *Accepting vessels.* The owner and operator of a fishing vessel of the United States equipped with purse seine gear that accepts fish from another purse seine fishing vessel under § 300.216(c) shall ensure that the net sharing activity is recorded on the catch report forms maintained pursuant to § 300.34(c)(1), in the format specified by the Pacific Islands Regional Administrator.

6. In § 300.222, paragraph (y) is revised and paragraphs (ee), (ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm) (nn), (oo), (pp), and (qq) are added to read as follows:

§ 300.222 Prohibitions.

* * * * *

(y) Discard fish at sea in the Convention Area in contravention of § 300.223(d).

* * * * *

(ee) Fail to carry on board a WCPFC observer during a transshipment at sea, as required in § 300.215(d).

(ff) Offload, receive, or load fish caught in the Convention Area from a purse seine vessel at sea in contravention of § 300.216.

(gg) Fail to ensure that a WCPFC observer is on board at least one of the vessels involved in the transshipment for the duration of the transshipment in contravention of § 300.216(b)(2)(i), except as specified at § 300.216(b)(4).

(hh) Receive transshipments from more than one fishing vessel at a time in contravention of § 300.216(b)(2)(ii), except as specified at § 300.216(b)(4).

(ii) Transship to or from another vessel, in contravention of § 300.216(b)(3)(i), except as specified at § 300.216(b)(4).

(jj) Provide bunkering, receive bunkering, or exchange supplies or provisions with another vessel, in contravention of § 300.216(b)(3)(ii).

(kk) Engage in net sharing except as specified under § 300.216(c).

(ll) Fail to submit, or ensure submission of, a transshipment report as required in § 300.218(b), except as specified under § 300.218(c).

(mm) Fail to submit, or ensure submission of, a transshipment notice as required in § 300.218(d).

(nn) Transship more than 24 nautical miles from the location indicated in the transshipment notice, in contravention of § 300.218(d)(3).

(oo) Fail to submit, or ensure submission of, a discard report as required in § 300.218(e).

(pp) Fail to submit, or ensure submission of, a net sharing report as required in § 300.218(f).

(qq) Fail to submit, or ensure submission of, an entry or exit notice for the Eastern High Seas Special Management Area as required in § 300.225.

7. In § 300.223, paragraph (d)(3) introductory text is revised to read as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(d) * * *

(3) An owner and operator of a fishing vessel of the United States equipped with purse seine gear must ensure the retention on board at all times while at sea within the Convention Area any bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), or skipjack tuna (*Katsuwonus pelamis*), except in the following circumstances and with the following conditions:

8. Section 300.225 is added to read as follows:

§ 300.225 Eastern High Seas Special Management Area.

(a) *Entry notices.* The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS must ensure the submission of a notice to the Commission at the address specified by the Pacific Islands Regional Administrator by fax or email at least six hours prior to entering the Eastern High Seas Special Management Area. The owner or operator must ensure the submission of a copy of the notice to NMFS at the address specified by the Pacific Islands Regional Administrator by fax or email at least six hours prior to entering the Eastern High Seas Special Management Area. The notice must be submitted in the format specified by the Pacific Island Regional Administrator and must include the following information:

(1) The vessel identification markings located on the hull or superstructure of the vessel;

(2) Date and time (in UTC) of anticipated point of entry;

(3) Latitude and longitude, to nearest tenth of a degree, of anticipated point of entry;

(4) Amount of fish product on board at the time of the notice, in kilograms, in total and for each of the following species or species groups: yellowfin tuna, bigeye tuna, albacore, skipjack tuna, swordfish, shark, other; and

(5) An indication of whether the vessel intends to engage in any transshipments prior to exiting the Eastern High Seas Special Management Area.

(b) *Exit notices.* The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS must ensure the submission of a notice to the Commission at the address specified by the Pacific Islands Regional Administrator by fax or email no later than six hours prior to exiting the Eastern High Seas Special Management Area. The owner or operator must ensure the submission of a copy of the notice to NMFS at the address specified

by the Pacific Islands Regional Administrator by fax or email no later than six hours prior to exiting the Eastern High Seas Special Management Area. The notices must be submitted in the format specified by the Pacific Island Regional Administrator and must include the following information:

(1) The vessel identification markings located on the hull or superstructure of the vessel.

(2) Date and time (in UTC) of anticipated point of exit.

(3) Latitude and longitude, to nearest tenth of a degree, of anticipated point of exit.

(4) Amount of fish product on board at the time of the notice, in kilograms, in total and for each of the following species or species groups: yellowfin tuna, bigeye tuna, albacore, skipjack tuna, swordfish, shark, other; and

(5) An indication of whether the vessel has engaged in or will engage in any transshipments prior to exiting the Eastern High Seas Special Management Area.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120201086–2085–01]

RIN 0648–XA904

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2012 Atlantic Bluefish Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes specifications for the 2012 Atlantic bluefish fishery, including an annual catch limit, total allowable landings, a commercial quota and recreational harvest limit, and a recreational possession limit. The intent of this action is to establish the allowable 2012 harvest levels and other management measures to achieve the target fishing mortality rate, consistent with the Atlantic Bluefish Fishery Management Plan.

DATES: Comments must be received on or before March 1, 2012.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2012–0003, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal: *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''Submit a Comment'' icon, then enter NOAA–NMFS–2012–0003 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Fax:* (978) 281–9135, Attn: Comments on 2012 Proposed Bluefish Specifications, NOAA–NMFS–2012–0003.
- *Mail and Hand Delivery:* Dan Morris, Acting Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on 2012 Bluefish Specifications.''

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at: *http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, (978) 281–9224.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic bluefish fishery is managed cooperatively by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The management unit for bluefish specified in the Atlantic Bluefish Fishery Management Plan (FMP) is U.S. waters of the western Atlantic Ocean. Regulations implementing the FMP appear at 50 CFR part 648, subparts A and J. The regulations requiring annual specifications are found at § 648.16.

The FMP requires the Council to recommend, on an annual basis, annual catch limit (ACL), annual catch target (ACT), and total allowable landings (TAL) that will control fishing mortality (F). An estimate of annual discards is deducted from the ACT to calculate the TALs that can be harvested during the year by the commercial and recreational fishing sectors. The FMP requires that 17 percent of the ACT be allocated to the commercial fishery, with the remaining 83 percent allocated to the recreational fishery. The Council may also recommend a research set-aside (RSA) quota, which is deducted from the bluefish TALs (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors.

The annual review process for bluefish requires that the Council's Bluefish Monitoring Committee and Scientific and Statistical Committee (SSC) review and make recommendations based on the best available data, including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock abundance, discards for the recreational fishery, and juvenile recruitment. Based on the recommendations of the Monitoring Committee and SSC, the Council makes a recommendation to the NMFS Northeast Regional Administrator. Because this FMP is a joint plan, the Commission also meets during the annual specification process to adopt complementary measures.

The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to ensure that they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the **Federal Register**, and after considering public comment, NMFS will publish final specifications in the **Federal Register**.

Proposed Specifications

Updated Model Estimates

According to Amendment 1 to the FMP, overfishing for bluefish occurs when F exceeds the fishing mortality rate that allows maximum sustainable yield (F_{MSY}), or the maximum F threshold to be achieved. The stock is considered overfished if the biomass (B) falls below the minimum biomass threshold, which is defined as ½ B_{MSY}. Amendment 1 also established that the long-term target F is 90 percent of F_{MSY} (F_{MSY} = 0.19, therefore F_{target} = 90 percent of F_{MSY}, or 0.17), and the long-term target B is B_{MSY} = 324 million lb (147,052 mt).

An age-structured assessment program (ASAP) model for bluefish was approved by the 41st Stock Assessment Review Committee (SARC 41) in 2005 to estimate F and annual biomass. In June 2011, the ASAP model was updated in order to estimate the current status of the bluefish stock (i.e., 2010 biomass and F estimates) and enable the Monitoring Committee and SSC to recommend 2012 specifications using landings information and survey indices through the 2010 fishing year. The results of the assessment update were as follows: (1) An estimated stock biomass for 2010, B_{2010} = 309.301 million lb (140,297 mt); and (2) an estimated fishing mortality rate for 2010, F_{2010} = 0.14. Based on the updated 2010 estimate of bluefish stock biomass, the bluefish stock is not considered overfished: B_{2010} is slightly less than B_{MSY}, but well above the minimum biomass threshold, ½ B_{MSY} = 162 million lb (73,526 mt). Estimates of F have declined from 0.41 in 1991 to 0.14 in 2010. The updated model results also conclude that the Atlantic bluefish stock is not experiencing overfishing; i.e., the most recent F (F_{2010} = 0.14) is less than the maximum F overfishing threshold specified by SARC 41 (F_{MSY} = 0.19). Bluefish was declared rebuilt in 2009.

2012 Catch Limits

Following the framework implemented by the Council's ACL Omnibus Amendment, the Council recommended that ACL be set to acceptable biological catch (ABC) (32.044 million lb, 14,535 mt). No deductions were recommended to account for management uncertainty, therefore ABC = ACL = ACT. The ACT is initially allocated between the recreational fishery (83 percent = 26.597 million lb, 12,064 mt) and the commercial fishery (17 percent = 5.448 million lb, 2,471 mt). After deducting an estimate of recreational discards (commercial discards are considered negligible), the recreational TAL would be 22.247 million lb (10,091 mt) and the commercial TAL would be 5.448 million lb (2,471 mt).

The FMP specifies that, if 17 percent of the ACT is less than 10.5 million lb, and recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the ACT. The recreational harvest limit (RHL) would then be adjusted downward so that the ACT would be unchanged.

The Council postponed projections of estimated recreational harvest for 2012 until Marine Recreational Fisheries Statistics Survey (MRFSS) landings data through Wave 5 of 2011 became available. In the interim, the 3-year average of recreational landings from 2008 through 2010 (16.216 million lb, 7,355 mt) was applied as the estimated recreational harvest for 2012. As such, it was expected that a transfer of up to 5.052 million lb (2,291 mt) from the recreational sector to the commercial sector could be approved. This option represents the preferred alternative recommended by the Council in its specifications document. The actual transfer amount in the final rule, if any, will depend on the 2011 recreational landings data.

RSA

Three research projects that would utilize bluefish RSA quota have been preliminarily approved and forwarded to NOAA's Grants Management Division. An 847,997-lb (385-mt) RSA quota is preliminarily approved for use by these projects during 2012. Proportional adjustments of this amount to the commercial and recreational allocations would result in a final commercial quota of 10.185 million lb (4,620 mt) and a final RHL of 17.234 million lb (7,817 mt). NMFS staff will update the commercial and recreational allocations based on the final 2012 RSA awards as part of the final rule for the 2012 specifications.

Proposed Recreational Possession Limit

The Council recommended, and NMFS proposes, to maintain the current recreational possession limit of up to 15 fish per person to achieve the RHL.

Proposed State Commercial Allocations

The proposed state commercial allocations for the recommended 2012 commercial quota are shown in Table 1, based on the percentages specified in the FMP. These quotas do not reflect any adjustments for quota overages that may have occurred in some states in 2011. Any potential deductions for states that exceeded their quota in 2011 will be accounted for in the final rule.

TABLE 1—PROPOSED BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2012

[Including RSA deductions]

State	Percent share	2012 Council-proposed commercial quota (lb)	2012 Council-proposed commercial quota (kg)
ME	0.6685	68,087	30,884
NH	0.4145	42,217	19,149
MA	6.7167	684,096	310,301
RI	6.8081	693,405	314,523
CT	1.2663	128,973	58,501
NY	10.3851	1,057,722	479,775
NJ	14.8162	1,509,030	684,485
DE	1.8782	191,295	86,770
MD	3.0018	305,733	138,678
VA	11.8795	1,209,927	548,814
NC	32.0608	3,265,392	1,481,158
SC	0.0352	3,585	1,626
GA	0.0095	968	439

TABLE 1—PROPOSED BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2012—Continued

[Including RSA deductions]

State	Percent share	2012 Council-proposed commercial quota (lb)	2012 Council-proposed commercial quota (kg)
FL	10.0597	1,024,580	464,742
Total	100.0001	10,185,000	4,619,840

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA), which describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this preamble and in the **SUMMARY**. A summary of the analysis follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

Small businesses operating in commercial and recreational (i.e., party and charter vessel operations) fisheries have been defined by the Small Business Administration as firms with gross revenues of up to $4.0 and $6.5 million, respectively. The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for Atlantic bluefish, as well as owners of vessels that fish for Atlantic bluefish in state waters. All federally permitted vessels fall into the definition of small businesses; thus, there would be no disproportionate impacts between large and small entities as a result of the proposed rule.

An active participant in the commercial sector was defined as any vessel that reported having landed 1 or more lb (0.45 kg) in the Atlantic bluefish fishery in 2010 (the most recent year for which there are complete data). The active participants in the commercial sector were defined using two sets of data. The Northeast seafood dealer reports were used to identify 718 vessels that landed bluefish in states from Maine through North Carolina in 2010. However, the Northeast dealer database does not provide information about fishery participation in South Carolina, Georgia, or Florida. South Atlantic Trip Ticket reports were used to identify 732 vessels [1] that landed bluefish in North Carolina and 827 vessels that landed bluefish on Florida's east coast. Bluefish landings in South Carolina and Georgia were near zero in 2010, representing a negligible proportion of the total bluefish landings along the Atlantic Coast. Therefore, this analysis assumed that no vessel activity for these two states took place in 2010. In recent years, approximately 2,063 party/charter vessels may have been active in the bluefish fishery and/or have caught bluefish.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. In addition, NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

The IRFA in the Draft EA addressed three alternatives (including a no action/status quo alternative) for the 2012 Atlantic bluefish fishery. All quota alternatives considered in this analysis are based on various commercial harvest levels for bluefish (a low, medium, and high level of harvest). For analysis of impacts of Alternatives 1 and 2, the maximum potential RSA quota of 3 percent of the TAL (847,997 lb, 384 mt) was used. For analysis of impacts of Alternative 3, the status quo RSA quota of 105,000 lb (48 mt) was used. For analysis of impacts of Alternative 1, the recommended transfer of 5.052 million lb (2,291 mt) from the recreational sector to the commercial sector was used. For analysis of impacts of Alternative 3, the transfer of 4.770 million lb (2,164 mt) from the recreational sector to the commercial sector was used, which is the same as the 2011 transfer amount. Under Alternative 2, no transfer of bluefish would be made from the recreational sector to the commercial sector, and the allocation of the TAL would be based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational).

Alternatives 1 and 2 would implement a TAL of 27.694 million lb (12,562 mt). Alternative 3 would implement status quo management measures for 2012, which would result in a TAL identical to the 2011 TAL, or 27.293 million lb (12,380 mt). The proposed 2012 Atlantic bluefish specification alternatives are shown in Table 2, along with the resulting commercial quota and RHL after any applicable transfer described earlier in the preamble and after deduction of the RSA quota. Alternative 1 (Council's preferred) would allocate 10.185 million lb (4,620 mt) to the commercial sector and 17.234 million lb (7,817 mt) to the recreational sector. Alternative 2 would result in the most restrictive commercial quota and would allocate 5.284 million lb (2,397 mt) to the commercial sector and leave 22.134 million lb (10,040 mt) available to the recreational sector. Alternative 3 (status quo) would allocate 9.375 million lb (4,252 mt) to the commercial sector and 17.813 million lb (8,080 mt) to the recreational sector. This alternative would also implement the status quo RSA level, which is currently approved for 105,000 lb (48 mt).

[1] Some of these vessels were also identified in the Northeast dealer data; therefore, double counting is possible.

TABLE 2—PROPOSED 2012 ATLANTIC BLUEFISH SPECIFICATION ALTERNATIVES FOR TAL, COMMERCIAL QUOTA, AND RHL (MILLION LB)

	TAL	Commercial quota	RHL
Alternative 1	27.694 (12,562 mt)	10.185 (4,620 mt)	17.234 (7,817 mt).
Alternative 2	27.694 (12,562 mt)	5.284 (2,397 mt)	22.134 (10,040 mt).
Alternative 3	27.293 (12,380 mt)	9.375 (4,252 mt)	17.813 (8,080 mt).

Commercial Fishery Impacts

To assess the impact of the alternatives on commercial fisheries, the Council conducted a threshold analysis and analysis of potential changes in ex-vessel gross revenue that would result from each alternative, using Northeast dealer reports and South Atlantic Trip Ticket reports.

Under Alternative 1, the recommended commercial quota for 2012 is approximately 40 percent higher than 2010 commercial landings. When this commercial quota is distributed to the states from Maine to Florida (based on the percentages specified in the FMP), each state's 2012 quota is higher than its 2010 landings. Results of the threshold analysis from dealer data estimated that there would be no revenue change relative to 2010 for vessels that reported landings of bluefish in 2010. If commercial quota is transferred from a state or states that do not land their entire bluefish quota for 2012, as was done in 2011 and frequently in previous years, the number of affected entities could change, thus changing the adverse economic impact on vessels landing in the state(s) receiving quota transfers.

Alternative 2 would result in a commercial quota 28 percent below the 2010 commercial landings. Although the overall commercial quota is lower than 2010 commercial landings, when distributed to the states, each state's 2012 quota is higher than its 2010 landings, except for Massachusetts, New York, New Jersey, and North Carolina. For these states, 2012 commercial landings would be constrained by the 2012 commercial quota under Alternative 2. The threshold analysis projected that 464 vessels could incur revenue losses of less than 5 percent and 62 vessels could incur revenue losses of 5 percent or more. Of the vessels likely to be impacted with revenue reductions of 5 percent or more, 34 percent had gross sales of $1,000 or less and 55 percent had gross sales of $10,000 or less, which may indicate that the dependence on fishing for some of these vessels is small.

Under Alternative 3, the 2011 commercial quota is approximately 29 percent higher than the 2010 commercial landings. Most states show a similar increase in fishing opportunities under this alternative; however, North Carolina's 2012 commercial quota would be lower than its 2010 commercial landings. Analysis of Alternative 3 concluded that 644 vessels would likely have no change in revenue relative to 2010, and 74 vessels were projected to incur revenue losses of less than 5 percent. No revenue reduction would be expected for vessels that land bluefish in North Carolina or Florida under Alternative 3. If commercial quota is transferred from a state or states that do not land their entire bluefish quota for 2012, as was done in 2011 and frequently in previous years, the number of affected entities described above could decrease, thus decreasing the adverse economic impact on vessels landing in the state(s) receiving quota transfers.

Recreational Fishery Impacts

For Alternative 1, the recommended RHL for the recreational sector (17.234 million lb, 7,817 mt) is approximately 7 percent above the recreational landings for 2010 (16.166 million lb, 7,333 mt) and 3 percent below the RHL implemented for 2011 (17.813 million lb, 8,080 mt). It is not anticipated that the recommend RHL will result in decreased in the demand for party/charter boat trips or affect angler participation in a negative manner. At the present time, there are neither behavioral or demand data available to estimate how sensitive party/charter boat anglers might be to proposed fishing regulations. However, given the level of the adjusted recreational harvest limit for 2012 and recreational landings in recent years, it is possible that given the proposed recreational harvest limits under Alternative 1, the demand for party/charter boat trips may not be negatively impacted. The impacts under Alternative 2 and 3 are expected to be similar to the recreational impacts under Alternative 1. The IRFA analyzed the maximum transfer amount from the recreational sector to the commercial sector, but future updates of recreational harvest projections could result in a smaller transfer amount, resulting in a high RHL.

The 2012 RHL under Alternative 2 would be 37 percent higher than the recreational landings in 2010 and 49 percent higher than the 2011 RHL. Under Alternative 3, the 2012 RHL would be 37 percent higher than 2010 recreational landings and less than 1 percent lower than the 2011 RHL. Thus, Alternatives 2 and 3 are not expected to have any negative effects on recreational fishermen or the demand for party/charter boat trips. In addition, neither of these alternatives are expected to result in recreational landings in excess of the RHL.

RSA Quota Impacts

For analysis of each alternative, the maximum RSA quota amount (3 percent of the TAL) was deducted from the initial overall TAL for 2012 to derive the adjusted 2012 commercial quota and RHL under each alternative. Thus, the threshold analyses for each alternative accounted for overall reductions in fishing opportunities due to RSA. Specification of RSA quota for 2012 is expected to benefit all participants in the fishery as a result of improved data and information for management or stock assessment purposes.

Summary

The Council recommended Alternative 1 over Alternatives 2 and 3 because it is projected to achieve the target F in 2012, while providing the second least restrictive commercial quota among the alternatives analyzed. Alternative 2 was not recommended by the Council because it would yield the lowest commercial fishing opportunities among the alternatives due to an absence of a quota transfer under this alternative. Alternative 3 was not selected because it would more restrictive than necessary given the advice of the SSC and Monitoring Committee.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 9, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2012–3563 Filed 2–14–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120120056–2055–01]

RIN 0648–XA797

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2012 Sector Operations Plans and Contracts, and Allocation of Northeast Multispecies Annual Catch Entitlements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This rule proposes 19 Northeast (NE) multispecies (groundfish) sector operations plans and contracts for fishing year (FY) 2012, and would allocate quotas of NE multispecies to the sectors. The NE Multispecies Fishery Management Plan (FMP) requires sectors to submit their operations plans and contracts to NMFS for approval or disapproval. Approval of a sector operations plan and contract is necessary for that sector to be allocated fish, and allows the sector members to be exempted from certain effort control regulations. If a sector operations plan and contract is not approved, the members of that sector must fish in the common pool and comply with all existing regulations. This rule also notifies the public that NMFS is extending the deadline to join a sector for FY 2012 through April 30, 2012. NMFS is soliciting comment on the proposed operations plans and contracts, and our proposal to grant 25 of the 49 exemptions requested, and deny the rest.

DATES: Written comments must be received on or before March 1, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2011–0264, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0264 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Mark Grant, 55 Great Republic Drive, Gloucester, MA 01930.
- *Fax:* 978–281–9135; Attn: Mark Grant.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Sector Policy Analyst, phone (978) 281–9145, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The NE groundfish sector management system is a voluntary system that allocates a portion of groundfish stocks to self-selecting groups of permit holders, called sectors. Sector members are granted increased operational flexibility through exemptions from regulations in exchange for taking on additional responsibility. The annual allocations to sectors are called Annual Catch Entitlements (ACE) and are based on the collective fishing history of the sectors' members. Sectors are self-selecting, meaning each sector can choose its members. Sectors may pool harvesting resources and consolidate operations to fewer vessels, if they desire.

NMFS received operations plans and preliminary contracts for FY 2012 from 19 sectors (see Table 1). The Administrator of NMFS for the NE Region (Regional Administrator) has made a preliminary determination that the 19 sector operations plans and contracts are consistent with the goals of the FMP, and comply with the measures that govern operation of a sector. This proposed rule summarizes many of the sector requirements and solicits comments on the proposed operations plans, our proposal to grant 25 of the 49 regulatory exemptions requested by the sectors and deny the rest, and the environmental assessment (EA). Copies of the operations plans and contracts, and the EA are available at *http://www.regulations.gov* and from NMFS (see **ADDRESSES**).

Amendment 13 to the FMP (69 FR 22906, April 27, 2004) established a process for forming sectors within the groundfish fishery, implemented restrictions applicable to all sectors, and authorized allocation of a total allowable catch (TAC) for specific groundfish species to a sector. Amendment 16 to the FMP (74 FR 18262, April 9, 2010) expanded sector management, revised the 2 existing sectors to comply with the expanded sector rules (summarized below), and authorized an additional 17, for a total of 19 sectors. Framework Adjustment (FW) 45 to the FMP (76 FR 23042, April 25, 2011) further revised the rules for sectors and authorized 5 new sectors (for a total of 24 sectors).

The FMP defines a sector as ''[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [sic] in order to achieve objectives consistent with applicable FMP goals and objectives.'' A sector's TAC is referred to as an ACE. Regional Administrator approval is required for a sector to be authorized to fish and to be allocated an ACE for stocks of regulated NE multispecies. Each individual sector's ACE for a particular stock represents a share of that stock's annual catch limit (ACL) available to commercial NE multispecies vessels, and each ACE is based upon the landings history of permits participating in that sector.

Nineteen sectors submitted operations plans and sector contracts, and requested allocation of stocks regulated under the FMP for FY 2012. The submitted operations plans are similar to previously approved versions, but incorporate changes to incorporate the requested exemptions. Five sectors chose not to submit operations plans and contracts for FY 2012: The Georges Bank (GB) Cod Hook Sector; Northeast Fishery Sector I; the State of New Hampshire Permit Bank Sector; the Commonwealth of Massachusetts Permit Bank Sector; and the State of Rhode Island Permit Bank Sector. The State of

Maine Permit Bank Sector, Northeast Fishery Sector IV and Sustainable Harvest Sector 3 would operate as private lease-only sectors. The Sustainable Harvest Sector 3 has not explicitly prohibited fishing activity, and may transfer permits to active vessels. A separate rule (76 FR 77200, December 12, 2011) proposes Amendment 17, which would allocate ACE to state-operated permit banks without requiring those permit banks to comply with the administrative and procedural requirements for groundfish sectors.

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Table 1. Summary of the number of permits, active vessels, gear type, and area fished for the proposed FY 2012 sectors.*

Sector	Permit Count	Number of Active Vessels	Gear Type(s) Fished	Area(s) Fished
Fixed Gear Sector	105	37	Gillnet: 45%	Gulf of Maine
			Hook Gear: 55%	Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
Maine Permit Bank Sector	8	0	N/A	N/A
NCCS	28	10	Trawl: 83%	Gulf of Maine
			Hook Gear: 17%	Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
NEFS 10	54	21	Trawl: 65%	Gulf of Maine
			Gillnets: 34%	Inshore Georges Bank
				Southern New England/Mid-Atlantic
NEFS 11	44	35	Trawl: 15%	Gulf of Maine
			Gillnet: 85%	Southern New England/Mid-Atlantic
NEFS 12	11	10	Trawl: 65%	Gulf of Maine
			Gillnet: 30%	Inshore Georges Bank
			Hook: 5%	
NEFS 13	38	29	Trawl: 96%	Gulf of Maine
			Gillnet: 4%	Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
NEFS 2	79	70	Trawl: 100%	Gulf of Maine
				Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid Atlantic
NEFS 3	83	35	Gillnet: 95%	Gulf of Maine
			Hook Gear: 5%	Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
NEFS 4	49	0	N/A	N/A
NEFS 5	29	22	Trawl: 100%	Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic

Table 1 Continued. Summary of the number of permits, active vessels, gear type, and area fished for the proposed FY 2012 sectors.*

Sector	Permit Count	Number of Active Vessels	Gear Type(s) Fished	Area(s) Fished
NEFS 6	19	4	Trawl: 100%	Gulf of Maine
				Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
NEFS 7	20	18	Trawl: 56%	Gulf of Maine
			Gillnet: 44%	Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
NEFS 8	20	12	Trawl: 100%	Gulf of Maine
				Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
NEFS 9	61	18	Trawl: 100%	Gulf of Maine
				Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
Port Clyde Community Groundfish Sector	42	32	Trawl: 46%	Gulf of Maine
			Gillnet: 54%	Inshore Georges Bank
				Offshore Georges Bank
Sustainable Harvest Sector 1	116	41	Trawl: 90%	Gulf of Maine
			Gillnet: 10%	Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
Sustainable Harvest Sector 3	19	0	Trawl: 100%	Gulf of Maine
				Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
Tri-State Sector	18	6	Trawl: 83%	Gulf of Maine
			Gillnet: 16%	Inshore Georges Bank
			Hook gear: 1%	Offshore Georges Bank
				Southern New England/Mid-Atlantic

* The data in this table is from the sector rosters submitted as of December 1, 2011, and is subject to change based on final sector rosters.

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Sector ACEs

As of December 1, 2011, 843 of the 1,475 eligible NE multispecies permits have preliminarily enrolled in a sector for FY 2012. These permits account for approximately 99 percent of the FY 2012 commercial groundfish sub-ACL. Table 1 includes a summary of permits enrolled in a sector as of December 1, 2011. Permits enrolled in a sector, and the vessels associated with those permits, have until April 30, 2012, to withdraw from a sector and fish in the common pool for FY 2012. NMFS will publish final sector ACEs and common pool sub-ACL totals, based upon final rosters, as soon as possible after the start of FY 2012.

Sector ACEs are calculated by summing the potential sector contributions (PSC) of a sector's members for a stock and then multiplying that percentage by the available commercial sub-ACL for that stock. Table 2 shows the cumulative percentage of each commercial sub-ACL each sector would receive, based on their rosters as of December 1, 2011. Tables 3 and 4 show the ACEs each sector would be allocated based on their December 1, 2011, sector rosters for FY 2012. The final ACEs, to the nearest pound, are provided to the individual sectors by NMFS and NMFS uses those final ACEs for monitoring sector catch. While the common pool does not receive a specific allocation of ACE, the common pool sub-ACLs have been included in each of these tables for comparison.

Individual permits are not assigned a PSC for Eastern GB cod or Eastern GB haddock; rather each sector's GB cod and GB haddock allocation is divided into a Western ACE and an Eastern ACE for each stock. A sector's Eastern GB cod and haddock ACEs are to be harvested exclusively in the Eastern U.S./Canada Area and are based on the sector's percentage of the GB cod and haddock ACLs. For example, if a sector is allocated 4 percent of the GB cod ACL and 6 percent of the GB haddock ACL, the sector is allocated 4 percent of the Eastern U.S./Canada Area GB cod TAC and 6 percent of the Eastern U.S./Canada Area GB haddock TAC as its Eastern GB cod and haddock ACEs. These amounts are then subtracted from the sector's overall GB cod and haddock allocations to determine its Western GB cod and haddock ACEs.

At the start of FY 2012, NMFS will withhold 20 percent of each sector's FY 2012 ACE for each stock to allow time to process any FY 2011 ACE transfers and to determine whether the FY 2012 ACE allocated to any sector needs to be reduced, or any overage penalties need to be applied to accommodate an FY 2011 ACE overage by that sector. Sectors will be allowed to trade ACE for 2 weeks following the finalization of sector catch for FY 2012 to balance any overages. The New England Fishery Management Council (Council) and sector managers will be notified of this deadline in writing and the decision will be announced on the NMFS Northeast Regional Office (*http://www.nero.noaa.gov/*).

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Table 2. Cumulative PSC (percentage) each sector would receive by stock for FY 2012.*^

Sector Name	Permit Count	GB Cod †	GOM Cod	GB Haddock †	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder ‡	CC/GOM Yellowtail Flounder ‡	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Common	632	1.89	2.08	0.51	1.49	1.43	22.17	2.59	2.16	1.95	0.65	3.32	0.80	1.38	0.79
Fixed Gear Sector	105	28.32	2.22	6.35	1.35	0.01	0.30	1.91	0.55	0.84	0.03	2.22	2.90	5.86	7.86
Maine	8	0.11	0.42	0.01	0.08	0.00	0.00	0.31	0.64	0.34	0.00	0.87	0.02	0.18	0.22
NCCS	28	0.17	0.73	0.12	0.34	0.84	0.73	0.61	0.15	0.22	0.07	0.90	0.44	0.86	0.45
NEFS 10	54	1.19	5.99	0.31	2.61	0.02	0.55	14.55	2.09	3.70	0.02	29.39	0.57	0.98	1.52
NEFS 11	44	0.40	12.27	0.04	2.39	0.00	0.02	2.13	1.38	1.47	0.00	2.00	0.96	2.43	6.57
NEFS 12	11	0.02	2.43	0.00	0.86	0.00	0.00	0.48	0.75	0.61	0.00	0.32	1.06	2.50	2.96
NEFS 13	38	6.84	0.75	13.82	0.88	16.65	14.12	3.46	3.76	4.79	5.39	1.59	3.88	1.71	2.17
NEFS 2	79	5.88	18.27	11.63	16.50	1.87	1.41	19.04	7.93	12.76	3.16	18.25	15.87	6.28	12.13
NEFS 3	83	1.27	15.70	0.15	9.91	0.01	0.36	9.23	4.27	2.99	0.03	10.70	1.38	4.80	7.07
NEFS 4	49	4.12	8.63	5.31	8.28	2.16	2.36	5.06	9.26	8.48	0.69	5.11	6.63	8.00	5.83
NEFS 5	29	1.77	0.09	3.35	0.31	6.31	22.14	0.64	1.15	1.32	1.79	0.09	0.24	0.20	0.26
NEFS 6	19	2.85	2.48	2.92	3.81	2.70	5.17	2.87	3.80	5.09	1.42	3.69	5.31	3.91	3.29
NEFS 7	20	4.39	0.43	3.74	0.56	9.29	3.93	2.68	3.41	3.07	11.38	0.86	0.54	0.74	0.69
NEFS 8	20	6.14	0.50	5.72	0.21	10.94	5.60	6.43	1.65	2.55	14.57	3.39	0.54	0.51	0.60
NEFS 9	61	14.66	1.74	11.97	4.79	27.55	8.15	10.65	8.38	8.36	42.80	2.44	5.92	4.17	4.24
Port Clyde Community Groundfish Sector	42	0.11	4.54	0.04	2.52	0.00	0.66	0.94	7.42	4.99	0.00	1.40	2.49	4.26	3.73
Sustainable Harvest Sector 1	116	18.78	19.84	32.20	42.37	12.55	8.09	12.76	39.51	34.42	15.90	9.57	50.24	51.01	39.52
Sustainable Harvest Sector 3	19	0.43	0.56	0.37	0.28	0.44	2.89	2.32	0.80	1.20	0.17	2.50	0.22	0.23	0.07
Tri-State Sector	18	0.68	0.36	1.45	0.44	7.24	1.35	1.33	0.93	0.85	1.92	1.40	0.00	0.02	0.03

* The data in this table are based on signed roster contracts as of December 1, 2011.

^ Percentages have been rounded to two decimal places this table, but seven decimal places are used in calculating ACEs. In some cases, this table shows a sector allocation of 0 percent of an ACE, but that sector is allocated a small amount of that stock.

† For FY 2012, 14.66 percent of the GB cod ACL would be allocated for the Eastern U.S./Canada Area, while 58.31 percent of the GB haddock ACL would be allocated for the Eastern U.S./Canada Area.

‡ SNE/MA Yellowtail Flounder refers to the SNE/Mid-Atlantic stock. CC/COM Yellowtail Flounder refers to the Cape Cod/GOM stock.

Table 3. Proposed ACE (in tons), by stock, for each sector for FY 2012.*^

Sector Name	Permit Count	GB Cod East	GB Cod West	GOM Cod †	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Common	632	3	93	TBD	39	116	11	3	186	30	78	31	24	26	73	50	110
Fixed Gear Sector	105	51	1,387	TBD	482	1,440	10	0	3	22	20	13	1	17	266	212	1,093
Maine	8	0	5	TBD	1	2	1	0	0	4	23	5	0	7	2	7	31
NCCS	28	0	8	TBD	9	27	2	2	6	7	5	3	3	7	40	31	63
NEFS 10	54	2	58	TBD	24	71	19	0	5	168	76	59	1	232	52	35	211
NEFS 11	44	1	19	TBD	3	8	17	0	0	25	50	24	0	16	88	88	914
NEFS 12	11	0	1	TBD	0	1	6	0	0	6	27	10	0	2	97	90	412
NEFS 13	38	12	335	TBD	1,048	3,131	6	40	118	40	136	76	201	13	356	62	302
NEFS 2	79	10	288	TBD	882	2,636	119	4	12	220	287	204	118	144	1,457	227	1,686
NEFS 3	83	2	62	TBD	11	33	71	0	3	106	154	48	1	84	126	174	983
NEFS 4	49	7	202	TBD	403	1,204	60	5	20	58	335	135	26	40	608	290	811
NEFS 5	29	3	86	TBD	254	758	2	15	185	7	41	21	67	1	22	7	36
NEFS 6	19	5	140	TBD	222	662	27	6	43	33	137	81	53	29	487	142	457
NEFS 7	20	8	215	TBD	284	848	4	22	33	31	123	49	425	7	50	27	95
NEFS 8	20	11	301	TBD	434	1,296	2	26	47	74	60	41	544	27	49	18	83
NEFS 9	61	26	718	TBD	908	2,712	35	66	68	123	303	133	1,598	19	543	151	590
Port Clyde Community Groundfish Sector	42	0	5	TBD	3	8	18	0	6	11	268	80	0	11	228	154	518
Sustainable Harvest Sector 1	116	34	920	TBD	2,442	7,297	305	30	68	147	1,428	549	594	75	4,610	1,846	5,494
Sustainable Harvest Sector 3	19	1	21	TBD	28	83	2	1	24	27	29	19	6	20	20	8	10
Tri-State Sector	18	1	33	TBD	110	328	3	17	11	15	34	14	72	11	0	1	5

*The data in this table are based on signed roster contracts as of December 1, 2011. Numbers are rounded to the nearest ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE for each stock for up to 61 days.

† The sector ACEs for GOM cod will be determined (TBD) after the ACL is set by FW 47.

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Table 4. Proposed ACE (in metric tons), by stock, for each sector for FY 2012.*^

Sector Name	Permit Count	GB Cod East	GB Cod West	GOM Cod †	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Common	632	3	84	TBD	35	105	10	3	168	27	71	28	22	24	66	45	99
Fixed Gear Sector	105	46	1,258	TBD	437	1,306	9	0	2	20	18	12	1	16	242	192	992
Maine	8	0	5	TBD	1	2	1	0	0	3	21	5	0	6	2	6	28
NCCS	28	0	8	TBD	8	25	2	2	6	6	5	3	2	6	37	28	57
NEFS 10	54	2	53	TBD	21	64	17	0	4	152	69	54	1	210	47	32	191
NEFS 11	44	1	18	TBD	2	7	16	0	0	22	45	21	0	14	80	80	829
NEFS 12	11	0	1	TBD	0	1	6	0	0	5	25	9	0	2	88	82	373
NEFS 13	38	11	304	TBD	951	2,840	6	36	107	36	123	69	182	11	323	56	274
NEFS 2	79	10	261	TBD	800	2,391	108	4	11	199	260	185	107	131	1,321	206	1,529
NEFS 3	83	2	56	TBD	10	30	65	0	3	97	140	43	1	77	115	158	892
NEFS 4	49	7	183	TBD	366	1,092	54	5	18	53	304	123	24	37	552	263	736
NEFS 5	29	3	78	TBD	230	688	2	14	168	7	38	19	61	1	20	6	33
NEFS 6	19	5	127	TBD	201	601	25	6	39	30	125	74	48	26	442	128	415
NEFS 7	20	7	195	TBD	257	769	4	20	30	28	112	44	385	6	45	24	87
NEFS 8	20	10	273	TBD	393	1,175	1	24	43	67	54	37	493	24	45	17	75
NEFS 9	61	24	651	TBD	823	2,461	31	60	62	111	275	121	1,450	17	493	137	535
Port Clyde Community Groundfish Sector	42	0	5	TBD	3	8	16	0	5	10	243	72	0	10	207	140	470
Sustainable Harvest Sector 1	116	30	834	TBD	2,215	6,620	277	27	61	133	1,295	498	539	68	4,182	1,675	4,984
Sustainable Harvest Sector 3	19	1	19	TBD	25	75	2	1	22	24	26	17	6	18	18	7	9
Tri-State Sector	18	1	30	TBD	100	298	3	16	10	14	30	12	65	10	0	1	4

*The data in this table are based on signed roster contracts as of December 1, 2011. Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 metric tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE for each stock for up to 61 days.

† The sector ACEs for GOM cod will be determined (TBD) after the ACL is set by FW 47.

Sector Operations Plans and Contracts

NMFS received nineteen sector operations plans and contracts by the September 1, 2011, deadline, and subsequently received preliminary rosters by the December 1, 2011, deadline for FY 2012. Each sector has elected to submit a single document that is both the sector's contract and the sector's operations plan. Therefore, these submitted operations plans not only contain the rules under which each sector would fish, but also provide the legal contract that binds the sector's members to the sector and its operations plan.

Each sector conducts fishing activities according to its approved operations plan; however, each operations plan and sector member must comply with the regulations governing sectors, which are found at § 648.87. All permit holders with a limited access NE multispecies permit that was valid as of May 1, 2008, are eligible to participate in a sector, including holders of inactive permits currently held in confirmation of permit history (CPH). While membership in each sector is voluntary, each member (and his/her permits enrolled in the sector) must remain with the sector for the entire FY, and cannot fish in the NE multispecies days-at-sea (DAS) program outside of the sector (i.e., in the common pool) during the FY. Participating vessels are required to comply with all pertinent Federal fishing regulations, except as specifically exempted by a letter of authorization (LOA) issued by the Regional Administrator. Sector operations plans may be amended in-season if a change is necessary and agreed to by NMFS, provided the change is consistent with the sector administration provisions. These changes are included in updated LOAs issued to sector members and through amendments to the approved operations plan.

Sectors are allocated all large-mesh groundfish stocks for which members have landings history, with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and the Southern New England/Mid-Atlantic (SNE/MA) stock of winter flounder. Atlantic halibut, ocean pout, northern windowpane flounder, and southern windowpane flounder are not allocated to sectors because these stocks have small ACLs, and vessels have limited landings history. Allocating these stocks to sectors would complicate monitoring of sector operations and would require a different scheme for determining each permit's potential sector contribution.

Sector vessels are required to retain all legal-sized allocated groundfish, unless an exemption is granted allowing sector vessels to discard legal-sized unmarketable fish at sea. Catch (including discards) of all allocated groundfish stocks by a sector's vessels would count against the sector's ACE, unless the catch is an element of a separate ACL sub-component, such as groundfish caught when fishing in an exempted fishery, or yellowtail flounder caught when fishing in the Atlantic sea scallop fishery. Sector vessels fishing for monkfish, skate, lobster (with non-trap gear), and spiny dogfish when on a sector trip (e.g., not fishing under provisions of a NE multispecies exempted fishery) would have their groundfish catch (including discards) on those trips debited against the sector's ACE. Ratios to calculate discards on unobserved sector trips would be determined by NMFS based on observed trips.

Each sector is required to ensure that its ACE is not exceeded during the FY. Amendment 16 required sectors to develop independent third-party dockside monitoring programs (DSM) to verify landings at the time they are weighed by the dealer, and to certify that the landing weights are accurate as reported by the dealer. FW 45 sets the required coverage level for DSM to the level that NMFS could fund. For FY 2012, NMFS will not fund a DSM program; therefore, the DSM level for FY 2012 is zero. Amendment 16 also required that sectors design, implement, and fund an at-sea monitoring (ASM) program beginning in FY 2012. However, for 2012 NMFS will fund and operate an ASM program for all sectors. The ASM coverage rate target is 17 percent, in addition to the expected 8-percent coverage rate of the Northeast Fishery Observer Program (NEFOP). These two programs are expected to result in coverage of 25 percent of all sector trips and will be the basis for calculating discards by sector vessels. This level of observer coverage has been considered sufficient to monitor sector fishing activity for purposes of calculating when ACLs have been achieved.

Sectors are required to monitor their landings and available ACE, and submit weekly catch reports to NMFS. In addition, the sector manager is required to provide NMFS with aggregate sector reports on a daily basis when a threshold (specified in the operations plan) is reached. Once a sector's ACE for a particular stock is caught, a sector is required to cease all fishing operations in that stock area until it could acquire additional ACE for that stock. ACE may be transferred between sectors, but ACE transfers to or from common pool vessels is prohibited. Each sector must submit an annual report to NMFS and the Council within 60 days of the end of the FY detailing the sector's catch (landings and discards by the sector), enforcement actions, and pertinent information necessary to evaluate the biological, economic, and social impacts from the sector, as directed by NMFS.

Each sector contract provides procedures to enforce the sector operations plan, explains sector monitoring and reporting requirements, presents a schedule of penalties, and provides authority to sector managers to issue stop fishing orders to sector members that violate provisions of the operations plan and contract. Sector members can be held jointly and severally liable for ACE overages, discarding of legal-sized fish, and/or misreporting of catch (landings or discards). Each sector operations plan submitted for FY 2012 states that the sector will withhold an initial reserve from the sector's sub-allocation to each individual member to prevent the sector from exceeding its ACE. Each sector contract also details the method for initial ACE allocation to sector members; for FY 2012, each sector has proposed that each sector member could harvest an amount of fish equal to the amount each individual member's permit contributed to the sector's ACE.

Amendment 16 contains several ''universal'' exemptions that apply to all sectors. These universal exemptions apply to: Trip limits on allocated stocks; the GB Seasonal Closure Area; NE multispecies DAS restrictions; the requirement to use a 6.5-inch (16.5-cm) mesh codend when fishing with selective gear on GB; and portions of the Gulf of Maine (GOM) Rolling Closure Areas.

Sectors may request additional exemptions from NE multispecies regulations through their sector operations plan. Amendment 16 prohibits sectors from requesting exemptions from year-round closed areas (CA), permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements or DSM requirements). If an exemption is granted to a sector, each sector vessel is issued a LOA by NMFS authorizing the exemption for each such vessel.

Requested FY 2012 Exemptions

A total of 49 exemptions from the NE multispecies regulations have been requested by sectors through their FY 2012 operations plans. These requests

are grouped into several categories in this rule: Exemptions previously approved that we proposed to approve for FY 2012 (numbers 1–16); new exemption requests we proposed to approve for FY 2012 (numbers 17–25); and requested exemptions that we propose to deny because they are prohibited (numbers 26–38), were previously rejected and no new information was provided (numbers 39–46), or because they may jeopardize rebuilding of the GOM cod stock (numbers 47–49). The recent GOM cod stock assessment determined the GOM cod stock is overfished and undergoing overfishing, which requires reevaluation of management of the stock. A full discussion of the 25 exemptions proposed for approval appears below.

Exemptions We Propose To Approve in FY 2012

In FY 2011, sectors were exempted from the following; and these exemptions have again been requested for FY 2012: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) 20-day spawning block out of the fishery required for all vessels; (3) limits on the number of gillnets imposed on Day gillnet vessels; (4) prohibition on a vessel hauling another vessel's gillnet gear; (5) limits on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS; (6) limits on the number of hooks that may be fished; (7) DAS Leasing Program length and horsepower restrictions; (8) the GOM Sink Gillnet Mesh Exemption January through April; (9) extension of the GOM Sink Gillnet Mesh Exemption through May; (10) prohibition on discarding; (11) daily catch reporting by sector managers for sector vessels participating in the CA I Hook Gear Haddock Special Access Program (SAP); (12) gear requirements in the U.S./Canada Management Area; (13) powering vessel monitoring systems (VMS) while at the dock; (14) DSM for vessels fishing west of 72°30′W. long.; (15) DSM for Handgear A-permitted sector vessels; and (16) DSM for monkfish trips in the monkfish Southern Fishery Management Area (SFMA).

In addition, sectors have requested exemptions from the following requirements in FY 2012: (17) Seasonal restrictions for the Eastern U.S./Canada Haddock SAP; (18) seasonal restriction for the CA II Yellowtail Flounder/Haddock SAP; (19) prohibition on fishing inside and outside of the CA I Hook Gear Haddock SAP while on the same trip; (20) maximum ACE carry-over provision; (21) ACE buffer provision; (22) 6.5-inch (16.5-cm) minimum mesh size requirement for trawl nets; (23) minimum fish size provisions for haddock; (24) prohibition on a vessel hauling another vessel's hook gear; and (25) the requirement to declare intent to fish in the Eastern U.S./Canada SAP and the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock. We propose to approve the above 25 exemption requests for FY 2012.

Exemptions We Proposed To Deny for FY 2012

We propose denying exemptions from the following 13 requirements because they are prohibited by FMP regulations: (26) Year-round access to the Cashes Ledge Closure Area; (27) year-round access to CA I; (28) year-round access to CA II; (29) year-round access to the Western GOM Closure Area; (30) extrapolation of discarded fish pieces across strata; (31) authorization to use video monitoring in place of ASM; (32) all hail requirements; (33) year-round access to the Eastern U.S./Canada Area; (34) ASM for sector vessels; (35) ASM for trips targeting dogfish; (36) ASM for hook-only and Handgear A vessels; (37) ASM for extra-large mesh gillnet vessels; and (38) the ASM standard for random trip selection.

We propose denying exemptions from the following 8 requirements because they were previously rejected, and sector applicants provided no new information: (39) minimum fish sizes to allow 100-percent retention; (40) minimum fish sizes to retain 12-inch (30.5-cm) yellowtail flounder; (41) VMS messages be sent directly to NMFS; (42) weekly catch report requirements; (43) prohibition on pair trawling; (44) minimum hook size; (45) 6.5-inch (16.5-cm) minimum mesh size for trawls to allow 5-inch (12.7-cm) mesh when targeting redfish; and (46) to submit a sector roster by the deadline. Exemptions 39 through 46 are not analyzed in the EA because no new information was available to change the analyses previously published in past EAs. Detailed information on these exemption requests and the reasons they were previously denied is contained in the proposed and final sector rules for FY 2010 (74 FR 68015, December 22, 2009, and 75 FR 18113, April 9, 2010, respectively) and the proposed and final sector rules for FY 2011 (76 FR 10852, February 28, 2011, and 76 FR 23076, April 25, 2011, respectively).

We propose denying exemptions from the following 3 requirements because they may jeopardize rebuilding of the GOM cod stock: (47) the April GOM Rolling Closure Area (RCA); (48) the May GOM RCA; and (49) the June GOM RCA. The draft EA contains analysis of exemptions 47 through 49 that was developed prior to the recent GOM cod stock assessment. NMFS is not proposing these exemptions because of the recent stock assessment. Therefore, the analysis will not be included in the final EA and the final EA will list these exemptions as considered, but rejected.

NMFS solicits public comment on the proposed sector operations plans and our proposal to grant 25 of the 49 requested exemptions, and deny the rest, as well as the EA prepared for this action. NMFS is particularly interested in receiving comments on the proposed exemptions from SAP seasons (numbers 17 and 18) and ACE carryover limits (number 20) because of concerns regarding the potential impacts of these exemptions.

On February 3, 2012, NMFS listed the GOM distinct population segment (DPS) of Atlantic sturgeon as threatened, and listed the New York Bight, Chesapeake Bay, Carolina, and South Atlantic DPSs of Atlantic sturgeon as endangered. The Biological Opinion for the NE multispecies fisheries will be reinitiated, and additional evaluation will be included to describe any impacts of the fisheries on Atlantic sturgeon and define any measures needed to mitigate those impacts, if necessary. NMFS anticipates that any measures, terms and conditions included in an updated Biological Opinion will further reduce impacts to the species and that the Biological Opinion will be completed before the beginning of the 2012 NE multispecies fishing year on May 1, 2012.

Proposed Exemptions—Regulations That Were Previously Exempted for FY 2011

1. 120-Day Block Out of the Fishery Requirement for Day Gillnet Vessels

The requirement for Day gillnet vessels to take 120 days out of the fishery was implemented in 1997 under FW 20 (62 FR 15381, April 1, 1997) to help ensure that management measures for Day gillnet vessels were comparable to effort controls placed on other fishing gear types, because gillnets continue to fish as long as they are in the water. Regulations at § 648.82(j)(1)(ii) require that each NE multispecies gillnet vessel declared into the Day gillnet category declare and take 120 days out of the non-exempt gillnet fishery. Each period of time taken out of the fishery must be a minimum of 7 consecutive days, and at least 21 of the 120 days must be taken between June 1 and September 30. An exemption from this requirement was previously approved for FYs 2010 and

2011 because this measure was designed to control fishing effort and, therefore, is no longer necessary for sectors because their ACEs limit overall fishing mortality. For additional information pertaining to this exemption and other exemptions first approved in FY 2010, please refer to the proposed and final sector rules for FY. This exemption would increase the operational flexibility of sector vessels and would be expected to increase profit margins of sector fishermen.

2. 20-Day Spawning Block

Vessels are required to declare out and be out of the NE multispecies DAS program for a 20-day period each calendar year between March 1 and May 31, when spawning is most prevalent in the GOM (§ 648.82(g)). This regulation was developed to reduce fishing effort on spawning groundfish stocks and an exemption was approved for FYs 2010 and 2011 because the sectors' ACE will restrict fishing mortality, making this measure no longer necessary as an effort control. Exempting sectors from this requirement would provide vessel owners with greater flexibility to plan operations according to fishing and market conditions.

3. Limit on the Number of Gillnets for Day Gillnet Vessels

The NE Multispecies FMP limits the number of gillnets a Day gillnet vessel may fish in the groundfish regulated mesh areas (RMA). The limits are specific to the type of gillnet and the RMA: 100 gillnets (of which no more than 50 can be roundfish gillnets) in the GOM RMA (§ 648.80(a)(3)(iv)); 50 gillnets in the GB RMA (§ 648.80(a)(4)(iv)); and 75 gillnets in the Mid-Atlantic (MA) RMA (§ 648.80(b)(2)(iv)). This exemption was previously approved in FYs 2010 and 2011 to allow sector vessels to fish up to 150 nets (any combination of flatfish or roundfish nets) in any RMA to provide greater operational flexibility to sector vessels in deploying gillnet gear. This measure was designed to control fishing effort and, therefore, is no longer necessary for sectors because their ACEs limit overall fishing mortality.

4. Prohibition on a Vessel Hauling Another Vessel's Gillnet Gear

Regulations at §§ 648.14(k)(6)(ii)(A) and 648.84(a) specify the manner in which gillnet gear must be tagged, requiring that information pertinent to the vessel owner or vessel be permanently affixed to the gear. No provisions exist in the regulations allowing for multiple vessels to haul the same gear. An exemption from this regulation was previously approved in FYs 2010 and 2011 to allow a sector to share fixed gear among sector vessels, thereby reducing costs. Consistent with the exemption as originally approved, the sectors requesting this exemption have proposed that all vessels utilizing community fixed gear be jointly liable for any violations associated with that gear. Additionally, each member intending to haul the same gear will be required to tag the gear with the appropriate gillnet tags, consistent with § 648.84(a).

5. Limit on the Number of Gillnets That May Be Hauled on GB When Fishing Under a Groundfish/Monkfish DAS

Regulations at § 648.80(a)(4)(iv) prohibiting Day gillnet vessels fishing on a groundfish DAS from possessing, deploying, fishing, or hauling more than 50 gillnets on GB were implemented as a groundfish mortality control under Amendment 13 in 2004. NMFS granted an exemption from the limit on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish in FYs 2010 and 2011 because the prohibition was designed to control fishing effort and, therefore, is no longer necessary for sectors because their ACEs limit overall fishing mortality. This exemption allows gillnets deployed under the Monkfish FMP to be hauled more efficiently by vessels that are issued permits under both the multispecies and the monkfish FMPs.

6. Limits on the Number of Hooks That May Be Fished

Vessels are prohibited from fishing or possessing more than 2,000 rigged hooks in the GOM RMA, more than 3,600 rigged hooks in the GB RMA, more than 2,000 rigged hooks in the SNE RMA, or more than 4,500 rigged hooks in the MA RMA (§§ 648.80(a)(3)(iv)(B)(*2*), 648.80(a)(4)(iv)(B)(*2*), 648.80(b)(2)(iv)(B)(*1*), and 648.80(c)(2)(v)(B)(*1*), respectively). This measure was initially implemented in 2002 through an interim action (67 FR 50292, August 1, 2002), and made permanent through Amendment 13, to control fishing effort and, therefore, is no longer necessary for sectors because their ACEs limit overall fishing mortality. An exemption from the number of hooks that a vessel may fish was approved for FYs 2010 and 2011 to allow sector vessels to more efficiently harvest ACE. This exemption was also previously granted to the GB Cod Hook Sector in FYs 2004–2009.

7. DAS Leasing Program Length and Horsepower Restrictions

While sector vessels are exempt from the requirement to use NE multispecies DAS to harvest groundfish, sector vessels are allocated, and must use, NE multispecies DAS for specific circumstances. For example, the Monkfish FMP requires that limited access monkfish Category C and D vessels harvesting more than the incidental monkfish possession limit must fish under both a monkfish DAS and a NE multispecies DAS. Therefore, sector vessels may still use, and lease, NE multispecies DAS.

NMFS granted an exemption from the DAS Leasing Program length and horsepower baseline restrictions (§ 648.82(k)(1)(ix)) on DAS leases between vessels within an individual sector, as well as between vessels in different sectors with this exemption, in FYs 2010 and 2011. The DAS Leasing Program restricted transfers of DAS between vessels of different sizes to the existing replaced vessel upgrade restrictions because of concerns about how DAS leases might change the character of the fishery. Groundfish mortality and fishing effort of sector vessels is no longer controlled by DAS, but is instead controlled only by the sector's available ACE. There are no vessel size restrictions on use of a sector's ACE, so continuing the DAS Leasing Program restrictions is no longer an effective method to maintain the character of the NE multispecies fleet. Further, exemption from this restriction allows sector vessels greater flexibility in the utilization of ACE and DAS. ACE and DAS regulations would ensure negligible impacts to allocated target species, and non-allocated target species and bycatch by capping overall mortality. Even with these exemptions, sectors would still be subject to non-allocated target species and bycatch management measures to limit their catch and control mortality. Providing greater flexibility in the distribution of DAS could result in increased effort on non-allocated target stocks, such as monkfish and skates. However, sectors predicted little consolidation and redirection of effort in their FY 2012 operations plans. In addition, any potential redirection in effort would be restricted by the sector's ACE for each stock, as well as by effort controls in other fisheries (e.g., monkfish trip limits and DAS).

8. The GOM Sink Gillnet Mesh Exemption January Through April; and 9. Extension of the GOM Sink Gillnet Mesh Exemption Through May

Exemptions 8 and 9 are discussed together because of their inter-relatedness; however, approval or disapproval of each of these exemptions is an independent decision. There is a minimum mesh size of 6.5-inch (16.5-cm) for gillnets in the GOM RMA (§ 648.80(a)(3)(iv)). Minimum mesh size requirements have been used to reduce overall mortality on groundfish stocks, as well as to reduce discarding, and improve survival, of sub-legal groundfish. Selectivity studies have indicated that 6.5-inch (16.5-cm) sink gillnets may not be effective at retaining haddock at the current legal minimum fish size. An exemption from this requirement was previously approved for FYs 2010 and 2011 to provide sector vessels the opportunity to potentially catch more GOM haddock, a fully rebuilt stock, during the months that haddock are most prevalent, and to provide sector participants the opportunity to more fully harvest their allocation of GOM haddock. This exemption was initially considered in a supplemental proposed and final rule to FY 2010 sector operations (75 FR 53939, September 2, 2010; and 75 FR 80720, December 23, 2010) and is functionally equivalent to a pilot program that was proposed by the Council in Amendment 16.

Together these exemptions allow sector vessels to use 6-inch (15.24-cm) mesh stand-up gillnets in the GOM RMA from January 1, 2013, to May 30, 2013, when fishing for haddock. The designation of this season is consistent with the original pilot program proposal and is the time period when haddock are most available in the GOM. Sector vessels utilizing this exemption would be prohibited from using tie-down gillnets in the GOM during this period. Sector vessels may transit the GOM RMA with tie-down gillnets, provided they are properly stowed and not available for immediate use in accordance with one of the methods specified at § 648.23(b).

Day gillnet vessels in sectors granted the exemption from Day gillnet net limits, as explained under exemption request 3, will not be subject to the general net limit in the GOM RMA, and will be able to fish up to 150 nets in the GOM RMA. In 2011, NMFS authorized vessels granted both exemptions to fish up to 150 6-inch (15.24-cm) mesh stand-up gillnets in the GOM RMA. For FY 2012, NMFS proposes the same exemption and again requests public comment on the feasibility of allowing up to 150 nets when fishing under this exemption. The LOA issued to sector vessels that qualify for this exemption will specify the net restrictions to help ensure the provision is enforceable. There will be no limit on the number of nets that participating Trip gillnet vessels will be able to fish with, possess, haul, or deploy, during this period, because Trip gillnet vessels are required to remove all gillnet gear from the water before returning to port at the end of a fishing trip.

NMFS believes that impacts to allocated target stocks resulting from this exemption would be negligible, given that fishing mortality by sector vessels is restricted by an ACE for allocated stocks, capping overall mortality. For FY 2010, this exemption was not authorized until the effective date of the FY 2010 Supplemental Sector rule, published in January 2011. Data indicate few trips in FY 2011 used this exemption. In January through May 2011, 63 trips were taken, yielding a catch of 89,208 lb (40,464 kg) from sink gillnet vessels fishing with less than 6.5-inch (16.5-cm) mesh size in the GOM RMA. It is possible that a higher net limit for Day gillnet vessels participating in this program will increase the number of gillnets in the water at any one time and, therefore, potentially increase interactions with protected species. However, potential negative impacts to protected species from this exemption are expected to be low because additional nets may result in greater efficiency, thus potentially reducing interactions with protected species. In addition, sector vessels utilizing this exemption would still be required to comply with all requirements of the Harbor Porpoise Take Reduction Plan and Atlantic Large Whale Take Reduction Plan.

10. Prohibition of Discarding

Amendment 16 contains this provision to ensure that the sector's ACE is accurately monitored. Sectors requested a partial exemption from this prohibition because of concerns that retaining and landing large amounts of unmarketable fish, including fish carcasses, creates operational difficulties and potentially unsafe working conditions for sector vessels at sea. The Regional Administrator considered a partial exemption from the requirement to retain all legal-sized fish in a proposed rule in FY 2010. However, due to problematic mid-season implementation issues, further consideration of this exemption was delayed until FY 2011. An exemption from this requirement was approved for FY 2011 to enhance operational flexibility, foster safer working conditions for sector vessels, and relieve the burden on sector vessels and their dealers to dispose of unmarketable fish.

Under this proposed exemption, all legal-sized unmarketable allocated fish would be accounted for in the overall sector-specific discard rates in the same way discards at sea of undersized fish are currently accounted for, based on trips observed by the NEFOP and ASM. If this exemption is approved, unmarketable fish discarded by a sector's vessels on observed trips will be deducted from that sector's ACE and incorporated into that sector's discard rates to account for discarding on unobserved trips. Vessels in a sector opting for this exemption will be required to discard all legal-sized unmarketable fish at sea (i.e., not just on select trips). Legal-sized unmarketable fish would be prohibited from being landed to prevent the potential to skew observed discards. The discarding exemption, in combination with the enhanced reporting of legal-sized unmarketable fish, would improve the monitoring of this unmarketable portion of sector catch, particularly on unobserved sector trips.

11. Daily Catch Reporting By Sector Managers for Vessels Participating in the CA I Hook Gear Haddock SAP

Sector vessels declared into the CA I Hook Gear Haddock SAP are required to submit daily catch reports to their sector manager, and their sector manager must report the catch information to NMFS on a daily basis (§ 648.85(b)(7)(v)(C)). This reporting requirement was originally implemented through FW 40A (69 FR 67780, November 19, 2004) to facilitate real-time monitoring of quotas by both the sector manager and NMFS. Amendment 16 grants authority to the Regional Administrator to determine if weekly sector reports were sufficient for the monitoring of most SAPs. Through the final rule implementing Amendment 16, the Regional Administrator alleviated reporting requirements for sector vessels participating in other Special Management Programs (SMPs), but reporting requirements were retained for the CA I Hook Gear Haddock SAP because NMFS must continue to monitor an overall haddock TAC that applies to sector and common pool vessels fishing in this SAP. An exemption was granted in FY 2011 to allow sector vessels participating in the CA I Hook Gear Haddock SAP to submit a daily VMS catch report directly to NMFS. This exemption is consistent with the requirement for common pool

vessels participating in this SAP and provides NMFS with the timely information necessary to manage the SAP quota.

12. Gear Requirements in the U.S./Canada Management Area

Any NE multispecies vessel fishing with trawl gear in the Eastern U.S./Canada Area must fish with either a Ruhle trawl, a haddock separator trawl, or a flounder trawl (§ 648.85(a)(3)(iii)). The final rule implementing Amendment 13 clarifies that the requirement to use a haddock separator trawl or a flounder trawl net was designed to ''ensure that the U.S./Canada TACs are not exceeded. Because both the flounder net and haddock separator trawl are designed to affect cod selectivity, and because the cod TAC is specific to the Eastern U.S./Canada Area only, application of this gear requirement to the Western U.S./Canada Area is not necessary to achieve the stated goal.''

The option to utilize a Ruhle trawl in the Eastern U.S./Canada Area was initially implemented through several in-season actions, and was made permanent in Amendment 16. This gear configuration was originally authorized for its demonstrated ability to allow the targeting of haddock, an under-harvested stock, while reducing bycatch of cod and yellowtail flounder stocks, which were identified as overfished. The addition of the Ruhle Trawl to gear previously approved (haddock separator trawl and flounder trawl net) provided added flexibility to trawl vessels.

An exemption from this requirement was granted in FY 2011 to enhance operational flexibility of sectors because overall fishing mortality would continue to be restrained by the sector ACEs.

13. Requirement To Power a VMS While at the Dock

Sector vessels are required to have an operational VMS unit onboard (§ 648.10(b)(4)) that transmits accurate positional information (i.e., polling) at least every hour, 24 hr per day, throughout the year (§ 648.10(c)(1)(i)). Amendment 5 (59 FR 9872, March 1, 1994) first included the requirement for vessels to use VMS. While the requirement to use VMS was delayed until implemented by FW 42 (72 FR 73274, December 27, 2007), NMFS supported polling to insure adequacy of monitoring requirements, address enforcement concerns, and because it could be beneficial in the event of an at-sea emergency.

An exemption from this requirement was granted in FY 2011 to lower costs associated with VMS for sector vessels. This exemption is administrative in nature and is anticipated to have negligible impacts beyond cost-savings. Vessels granted the exemption must continue to comply with other reporting requirements (trip end hails, VMS declarations, etc.) and must submit an appropriate powerdown VMS declaration, as explained on their LOA, any time the vessel is underway or away from the dock. In granting the exemption for FY 2011, the Regional Administrator reserved the right to revoke the exemption if it was determined the exemption was being misused or abused, and proposes to do so again if this exemption is granted in FY 2012.

14. DSM Requirements for Vessels Fishing West of 72°30′ W. Long

In response to FY 2010 requests for exemption from the DSM requirement for vessels fishing in SNE and MA waters, the Regional Administrator requested that the Council consider establishing a geographic boundary outside of which DSM would not be required. The Council responded in FW 45 by removing DSM from the list of prohibited exemptions to allow sectors to request geographic- and gear-based exemptions from DSM. This exemption was granted in FYs 2010 and 2011 based on data showing that little groundfish is caught in the area.

Generally, sectors using this exemption must still comply with any DSM program specified by NMFS in FY 2012 (§ 648.87(b)(1)(v)). The required DSM coverage level for FY 2012 will be zero percent, because NMFS will not be funding DSM. However, should that change, then vessels would once again be subject to DSM. This exemption would reduce the burden of any DSM coverage level above zero.

15. DSM Requirements for Handgear A-Permitted Sector Vessels

FW 45 removed the DSM requirements for common pool vessels with handgear (Categories HA and HB) or Small Vessel (Category C) permits. Consistent with that flexibility, NMFS exempted sector vessels with handgear permits (Category HA) from DSM requirements due to the comparatively small catch of these vessels and disproportionately high DSM costs they would incur.

In general, sectors must comply with any DSM program specified by NMFS in FY 2012 (§ 648.87(b)(1)(v)). The required DSM coverage level for FY 2012 will be zero percent because NMFS will not be funding DSM. However, should that change, then sector handgear vessels would once again be subject to DSM. This exemption would reduce the burden of any DSM coverage level above zero for sector handgear vessels.

16. DSM Requirements for Monkfish Trips in the Monkfish SFMA

Several sectors requested exemptions for FY 2011 from DSM requirements for trips targeting monkfish, skate and/or dogfish. NMFS highlighted a number of operational concerns about exempting these trips in the proposed rule for FY 2011. In the final rule for FY 2011, NMFS approved an exemption from DSM for sector trips declared into the SFMA when fishing on a concurrent monkfish/NE multispecies DAS fishing with 10-inch (25.4-cm) or greater mesh, provided that the vessel fishes the entirety of its trip in the SFMA. This exemption was granted because of the small catch of these vessels and disproportionately high DSM costs they would incur.

Sectors must comply with any DSM program specified by NMFS in FY 2012 (§ 648.87(b)(1)(v)). The required DSM coverage level for FY 2012 will be zero percent because NMFS will not be funding DSM. However, should that change, then sector vessels would once again be subject to DSM. This exemption would reduce the burden of any DSM coverage level above zero for a sector vessel fishing with 10-inch (25.4-cm) or greater mesh when fishing the entirety of its trip in the SFMA.

Proposed Exemptions—Additional Regulations With New Exemption Requests

17. Seasonal Restriction for the Eastern U.S./Canada Haddock SAP

The Eastern U.S./Canada Haddock SAP was implemented by FW 40A in 2004 to provide an opportunity to target haddock while fishing on a Category B DAS in, and near, CA II (69 FR 67780, November 19, 2004). The SAP required vessels to use gear that reduced the catch of cod and other stocks of concern. The SAP had a season of May 1 through December 31 to reduce effort during periods of groundfish spawning. In 2006, FW 42 extended this SAP and shortened the season to August 1 through December 31 to reduce cod catch. Subsequent actions approved additional gear types for use in this SAP.

For sector vessels, the only benefit of this SAP is that it provides access to the northern tip of CA II. Amendment 16 exempts sectors from the gear requirements of this SAP because sector catch is constrained by ACEs, but sectors are still required to comply with

reporting requirements and the restricted season from August 1 through December 31 (§ 648.85(b)(3)(iv)). Sectors argue that their catch is restricted by ACE and their access to the SAP area in the northern tip of CA II should not be seasonally restricted. Sectors further argue that impacts to the physical environment and essential fish habitat (EFH) will be negligible because any increase in effort will be minor and the portion of CA II included in this SAP is outside any habitat areas of particular concern (HAPC). NMFS has some concern that this exemption may have negative effects on allocated stocks by allowing an increase in effort in a time and place where those stocks, particularly haddock, aggregate to spawn.

Amendment 16 prohibits sectors from being granted exemptions from closed areas. NMFS requests comment on whether it is appropriate to exempt sectors from a SAP season, given that the portion of the SAP in the closed area is already open part of the year, or if the current prohibition on allowing exemptions from closed areas applies to SAPs.

18. Seasonal Restriction for the CA II Yellowtail Flounder/Haddock SAP

The CA II Yellowtail Flounder/Haddock SAP was implemented by Amendment 13 in 2004 to provide an opportunity to target yellowtail flounder in CA II on a Category B DAS. The SAP required vessels to use either a flounder net or other gears approved for use in the Eastern U.S./Canada Area. The SAP season ran from June 1 through December 31. In 2005, FW 40 B extended this SAP and shortened the season to July 1 through December 31 to reduce interference with spawning yellowtail flounder (70 FR 31323, June 1, 2005).

Amendment 16 further revised this SAP by opening the SAP to target haddock from August 1 through January 31, when the SAP is not open to allow targeting of GB yellowtail flounder. Sectors are required to comply with the SAP reporting requirements and the restricted season of August 1 through January 31 (§ 648.85(b)(3)(iii)). When open only to target haddock, the flounder net is not authorized and only approved trawl gears or hook gear may be used. The gear requirements were implemented to avoid catching yellowtail flounder when the SAP was open only to the targeting of haddock.

Unlike the Eastern U.S./Canada Haddock SAP, the CA II Yellowtail Flounder/Haddock SAP provides access to a large area in CA II. Sectors are required to use the same approved gears as the common pool to reduce the advantage sector vessels have over common pool vessels. Sectors argue that their catch is restricted by ACE and their access to the SAP area in CA II should not be restricted.

The seasonal restriction on this SAP was put in place to allow vessels to target denser populations of yellowtail flounder and haddock while avoiding cod in the summer and spawning groundfish in the spring. Impacts to the physical environment and EFH would be negligible because any increase in effort would be minor and the portion of CA II included in this SAP is outside any HAPC. NMFS has some concern that this exemption could have negative effects on allocated stocks by increasing effort in a time and place where those stocks, particularly haddock, aggregate to spawn.

Amendment 16 prohibits sectors from being granted exemptions from closed areas. NMFS requests comment on whether it is appropriate to consider exemptions from a SAP season, given that the portion of the SAP in the closed area is already open part of the year, or if the current prohibition on allowing exemptions from closed areas applies to SAPs.

19. Prohibition on Fishing Inside and Outside the CA I Hook Gear Haddock SAP While on the Same Trip

FW 40A established the CA I Hook Gear Haddock SAP. NE multispecies vessels fishing on a trip within this SAP are prohibited from deploying fishing gear outside of the SAP on the same trip when they are declared into the SAP (§ 648.85(b)(7)(ii)(G)). This restriction was established to avoid potential quota monitoring and enforcement complications that could arise when a vessel fishes both inside and outside the SAP on the same trip. This exemption request would allow sector vessels to fish both inside and outside the CA I Hook Gear Haddock SAP on the same trip. To identify catch from inside and outside the SAP on the same trip, sector vessels would be required to send NMFS a VMS catch report that specifically identifies GB haddock (and any other shared allocation) catch from inside the SAP prior to the end of the trip or within 24 hr of landing. Sectors are requesting this exemption to increase their operational flexibility and efficiency. NMFS has no reason to believe that this particular catch report would be any less accurate than the existing sector catch reports.

20. Maximum ACE Carryover Provision

Amendment 16 allows each sector to carry over up to 10 percent of its original ACE allocation of each stock from one FY to the next, with the exception of GB yellowtail flounder (§ 648.87(b)(1)(i)(C)). Allowing a sector to carry over a portion of its allocation reduces concern that a sector may leave ACE uncaught out of concern it may accidentally exceed its ACE. An exemption was requested to allow sectors to carry over up to 50 percent of unused ACE into the following FY. Allowing sectors to carry over ACE would provide for greater flexibility in when and how they fish during a given FY.

NMFS has conducted a preliminary analysis of ACE carryover limits and the potential for overfishing in the subsequent year. Based on the preliminary analysis, there may be a possibility to allow sectors to carry over 11 percent to 30 percent of each stock's ACE (except GB yellowtail flounder and GOM cod) from one FY to the next, but only to the extent that there is sufficient information to conclude that such carryover does not result in overfishing, impede rebuilding objectives or threaten the health of the stock. Moreover, any such carryover must be consistent with Magnuson-Stevens Act requirements and the setting of ABCs and ACLs. This means that additional carryover must be factored into, and accounted for, in the setting of over-fishing limits (OFL), allowable biological catches (ABC) and ACLs for any given fishing year. GB yellowtail flounder is excluded by Amendment 16 and its implementing regulations because it is a transboundary stock managed under the U.S./Canada Resource Sharing Understanding, and therefore has quotas set by an informal agreement between the Northeast Region of NMFS and the Maritimes Region of the Department of Fisheries and Ocean of Canada. In addition, NMFS proposes to exclude GOM cod from any increase in the carry-over provision due to the results of a new stock assessment (SAW 53, 2012; copies available from NMFS, see ADDRESSES), which determined that GOM cod is overfished, overfishing is occurring, and is in poor condition; thus, raising concern about the long-term health of this stock.

The preliminary ACE carryover analysis considered seven groundfish stocks, representing a broad range of life spans and growth rates. A deterministic model was used to evaluate the effect of different percentages of ACE carryover on fishing mortality in the following year. The primary constraint on the model was that the percentage of ACE carryover could not allow overfishing in the following year. Despite a wide range of differences in biology among the

stocks, the maximum carryover percentage was little affected by these differences. Instead, the primary factor affecting the maximum carryover percentage was the relationship between the ABC and the overfishing threshold in the following year. The NE multispecies FMP sets the ABC based on the target rate for fishing mortality being 75% of the mortality rate that would achieve maximum sustainable yield (Fmsy). If the actual fishing mortality rate in the following year is near the target fishing mortality rate (75% of Fmsy), then the maximum ACE carryover could be about 28 percent to 30 percent, while avoiding overfishing. The analysis further indicates that carryover at 28 percent to 30 percent would not undermine rebuilding programs or stock health, again, provided the actual fishing mortality rate does not exceed the target fishing mortality rate.

NMFS provided the analysis to the Council with a request that its Scientific and Statistical Committee (SSC) review it. In a letter dated January 20, 2012, the Council raised a number of questions about the preliminary analysis and the legality of such carryovers in light of Magnuson-Stevens Act requirements. These questions included:

1. Is it consistent with the Magnuson-Stevens Act to allow carryover that results in allocating an amount of fish greater than the ABC?

2. Is it consistent with the National Standards Guidelines to allow a carryover amount that reduces the amount of uncertainty buffer between the overfishing level and the ABC to zero without explicit concurrence of the SSC?

3. How does the variable recruitment of rebuilding stocks affect the analysis' assumptions about allowable ACE carryover?

4. If carryover allows catches to exceed the ABC for a rebuilding program, how is the rebuilding program affected?

5. If a stock ABC is declining, carryover may result in allocating an amount of fish greater than the over-fishing limit. Is this consistent with the Magnuson-Stevens Act?

6. Does a declining ABC affect the amount of permissible ACE carryover? and,

7. Do fluctuations in ABC need to be considered in setting permissible ACE carryover levels?

NMFS will consider any input from the SSC, if received in a timely manner, and the questions raised by the Council, to help determining whether increased carryover is justified for FY 2012 and, if so, at what level it should be set so that carryover does not result in overfishing, impede rebuilding objectives, or threaten the health of the stock, and otherwise satisfy the legal requirements for setting ABCs and ACLs. NMFS invites comments on the requests for additional carryover, including the preliminary analysis described above and the issues raised by the Council.

21. ACE Buffer Provision

Amendment 16 implemented the ACE buffer provision to ensure that each sector would have 20 percent of its ACE available to account for any potential overage from the previous year. At the beginning of each FY, NMFS withholds 20 percent of a sector's ACE for each stock for up to 61 days (i.e., through June 30), or longer (§ 648.87(b)(1)(iii)(C)). This hold gives NMFS time to finalize sector catch and ACE trades that take place after the end of the FY, and to apply any overage penalties to a sector that exceeded its ACE. Sectors are requesting to be exempted from this 20-percent ACE buffer restriction when a sector manager reports that the sector has not exceeded any of its ACE. Sectors seek to increase operational flexibility and efficiency to bring additional revenue into the sector.

NMFS has some concern with this request because it has no ability to verify whether a sector manager's report is accurate until the annual reconciliation process, as discussed above, is complete. Therefore, sectors could potentially exceed their ACE in a subsequent FY after an overage before the second year's ACE is reduced by the first year's overage. For example, if a sector was allocated 100 mt of a stock in year 1, but caught 120 mt, the sector would be required to pay back 20 mt in year two. However, if the sector fished its complete allocation for year 2 before NMFS discovered the overage from year 1, the sector would then have overfished the reduced year 2 allocation.

22. 6.5-Inch (16.5-Cm) Minimum Mesh Size Requirement for Trawl Nets

Minimum mesh sizes were initially adopted through interim rules in 2001 and 2002 (67 FR 21140, April 29, 2002; 67 FR 50292, August 1, 2002), and made permanent through Amendment 13. FW 42 further modified the mesh regulations in the SNE and MA RMAs to reduce discards of yellowtail flounder. The regulations at § 648.80 specify the minimum mesh size that may be used in fishing nets on vessels fishing in the GOM, GB, SNE, and MA RMAs. Minimum mesh size restrictions have been used with other management measures to reduce overall mortality on groundfish stocks, as well as to reduce discarding, and improve survival, of sub-legal groundfish. These requirements were intended to protect spawning fish and increase the size of targeted fish.

This exemption would allow sector vessels to use 6-inch (15.2-cm) mesh codends on trawl nets to target redfish. The exemption is intended to increase the catch rate of redfish. The requesting sectors argue that this exemption could increase the operational flexibility of sector vessels and could increase profit margins of sector fishermen.

The sectors making the request have proposed that sector vessels participating in the directed redfish fishery be required to declare their intentions to the Sector Manager and NMFS at least 48 hr prior to departure, and that at-sea monitors be present on all trips using this exemption to monitor catch and bycatch. In addition, daily catch reports will be submitted to the Sector Manager to ensure that all catch is harvested within the sector's ACE. The exemption is intended to retain a greater proportion of redfish in the trawl codend.

This exemption is similar to exemptions requested and denied in previous years. This exemption could result in greater retention of sub-legal groundfish, as well as non-allocated species and bycatch. Habitat could also be negatively impacted due to the anticipated increased use of trawl gear. Should an exemption from minimum mesh size restrictions increase sub-legal groundfish bycatch by sector vessels, juvenile escapement, stock age structure, and overall mortality reduction objectives could be undermined. An exemption could raise additional equity concerns if sub-legal bycatch triggered management actions affecting the entire fishery, including non-sector vessels. Furthermore, an exemption from minimum mesh size restrictions could be difficult to enforce at-sea, because it would require enforcement personnel to differentiate the appropriate mesh size applicable to exempt vessels from that applicable to non-exempt vessels.

NMFS is currently funding a study through the Northeast Cooperative Research Partners Program to investigate strategies and methods to sustainably harvest the redfish resource in the GOM through a network approach, including fishing enterprises, gear manufacturers, researchers, social and economic experts, and managers. This approach will include investigating success of various mesh sizes within the fishery. Given that the use of this smaller mesh

could negatively impact spawning fish and populations of flounders, which the current minimum mesh sizes were intended to protect, NMFS has reservations about approving this exemption, until the results from this study can be considered.

23. Minimum Fish Size Provisions for Haddock

Commercial haddock catch must measure a minimum of 18 inches (45.7 cm) to be retained by a vessel (§ 648.83(a)(1)). This restriction includes whole fish or any part of a fish while possessed on board a vessel, with the exception of a small amount of fish (up to 25 lb (11.3 kg)) that each person on board may retain for at-home consumption (§ 648.83(a)(2)). The 18-inch (45.7-cm) minimum size for haddock was first implemented by an interim action in 2009 (74 FR 17030, April 13, 2009). This was a reduction from the previous minimum size of 19 inches (48.3 cm), designed to reduce discards and increase yield. The 18-inch (45.7-cm) minimum size was made permanent by Amendment 16.

Sectors requested an exemption from the minimum size regulation so they could land headed and gutted haddock that are less than 18 inches (45.7-cm) as a value-added product. This exemption would simply allow legal-sized fish that were previously landed whole to be landed headed, or headed and gutted. There would be no change to the actual size composition of the catch. Regulations similar to this exist in other fisheries, such as monkfish. These fisheries use a conversion ratio to account for size and/or weight differences. If approved, NMFS would need to develop a ratio to account for the size/weight differences for haddock landed headed and/or headed and gutted. Allowing this exemption could present significant enforcement issues by allowing different legal minimum fish sizes at sea.

24. Prohibition on a Vessel Hauling Another Vessel's Hook Gear

Current regulations prohibit one vessel from hauling another vessel's hook gear (§§ 648.14(k)(6)(ii)(B)). No provisions exist in the regulations allowing for multiple vessels to haul the same gear. The regulations facilitate the enforcement of existing hook regulations created as mortality controls, because a single vessel is associated with each set of gear. Sectors have requested an exemption from this prohibition to allow fishermen from within the same sector to haul each other's hook gear. All vessels participating in ''community'' fixed gear would be jointly liable for any violations associated with that gear. This joint liability would assist in the enforcement of regulations. The increased flexibility afforded by this exemption could increase efficiency.

25. Requirement To Declare Intent To Fish in the Eastern U.S./Canada SAP and the CA II Yellowtail Flounder/ Haddock SAP Prior To Leaving the Dock

NE multispecies vessels are required to declare that they will be fishing in either the Eastern US/CA Haddock SAP or the CA II Yellowtail Flounder/ Haddock SAP prior to leaving the dock (§ 648.85(b)(8)(v)(D) and § 648.85(b)(3)(v)). Framework 40A implemented this measure so that vessels fishing exclusively in those areas could be credited DAS for their transit time to and from these SAPs. Sectors are requesting an exemption from having to declare their intent to fish in those areas prior to departing the dock because they are no longer limited by NE multispecies DAS and their catch is limited to their ACE. Sectors seek to increase their efficiency with this exemption.

Requested Exemptions We Propose To Deny Because They Are Prohibited

Amendment 16 contains several ''universal'' exemptions applicable to all sectors and authorized sectors to request additional exemptions from NE multispecies regulations through their sector operations plans. However, Amendment 16 also prohibits sectors from requesting exemptions from year-round closed areas, permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements or DSM requirements). Exemptions were requested by several sectors that are specifically prohibited (e.g., access to permanent closed areas) or that fall outside of the NE multispecies regulations (e.g., Eastern U.S./Canada in-season actions).

In a letter dated September 1, 2010, NMFS notified the Council that NMFS interprets the reporting requirement exemption prohibition broadly to apply to all monitoring requirements, including ASM, DSM, ACE monitoring, and the counting of discards against sector ACE. In this letter (copies are available from NMFS, see **ADDRESSES**), NMFS also requested that the Council define which regulations sectors may not be exempted from. On November 18, 2010, the Council addressed this letter by voting to include in FW 45 the removal of DSM from the list of regulations that sectors may not be exempted from, but did not take such action for ASM, ACE monitoring, VTR regulations, or counting of discards against ACE.

We propose denying, and do not analyze in the EA, exemptions from the following 13 requirements because they are prohibited: (26) Year-round access to the Cashes Ledge Closure Area; (27) year-round access to CA I; (28) year-round access to CA II; (29) year-round access to the Western GOM Closure Area; (30) from extrapolation of discarded fish pieces across strata; (31) authorization to use video monitoring in place of ASM; (32) from hail requirements; (33) year-round access to the Eastern U.S./Canada Area; (34) from ASM for sector vessels; (35) from ASM for trips targeting dogfish; (36) from ASM for hook-only and Handgear A vessels; (37) from ASM for extra-large mesh gillnet vessels; and (38) from the ASM standard for random trip selection.

Requested Exemptions We Propose To Deny Because They Were Previously Rejected and No New Information Was Provided

We propose denying exemptions from the following 8 requirements because they were previously rejected and sectors provided no new information in support: (39) Minimum fish sizes, to allow 100-percent retention; (40) minimum fish sizes, to retain 12-inch (30.5-cm) yellowtail flounder; (41) that VMS messages be sent directly to NMFS; (42) weekly catch report requirements; (43) no pair trawling; (44) minimum hook size; (45) 6.5-inch (16.5-cm) minimum mesh size for trawls to allow 5-inch (12.7-cm) mesh when targeting redfish; and (46) submitting a roster by the deadline. Exemptions 39 through 46 are not analyzed in the EA because no new information was available to change the analyses previously published in past EAs. The details of these exemption requests, analysis of these exemptions, and the reasons they were previously denied are contained in the final rules approving sectors for FYs 2010 and 2011, and their accompanying EAs. The requesting sectors have provided no new information, justification, rationale, or mitigation to address these concerns. Accordingly, we proposed to deny these exemptions in this rule.

Requested Exemptions We Proposed To Deny Because They May Jeopardize Rebuilding of the GOM Cod Stock

We propose denying exemptions from the following 3 requirements because they may jeopardize rebuilding of the GOM cod stock, which a new stock assessment has determined is overfished and experiencing overfishing: (47) April

GOM Rolling Closure Area; (48) May GOM Rolling Closure Area; and (49) June GOM Rolling Closure Area.

NMFS denied requests for additional exemptions from GOM Rolling Closure Areas in FYs 2010 and 2011 because of concerns that directly targeting spawning aggregations can adversely impact the reproductive potential of a stock, as opposed to post-spawning mortality. In addition, those requests were disapproved because the existing GOM Rolling Closure Areas provide some protection to harbor porpoise and other marine mammals.

In response to requests for additional exemptions from GOM Rolling Closure Areas (including new exemption requests that would exclude gillnet gear) and discussions about increasing access to these areas at the Council's Lessons Learned Sector Workshop, the Regional Administrator considered proposing partial exemption from some of the closures as a short-term solution while the Council considered the long-term future of these closures as part of the pending omnibus habitat amendment. Options considered for possible exemptions would have required trawl vessels to use selective trawl gears, excluded gillnet gear, and prohibited hook gear from using squid or mackerel as bait. However, given the new status of the GOM cod stock, no additional exemptions from the GOM RCAs are proposed in this rule.

Deadline To Join a Sector for FY 2012

The regulations currently provide that each sector must submit a final roster to NMFS by December 1, prior to the FY in which the sector intends to begin operations, unless otherwise instructed by NMFS. The deadline for FY 2012 was previously announced as December 1, 2011, or April 30, 2012, for permits that changed ownership after December 1. NMFS is extending the FY 2012 sector roster deadline for all permits through April 30, 2012. This opportunity is being provided to address concerns raised at the January 31–February 2, 2012, Council meeting regarding the recent GOM cod assessment and the potential disproportional impacts on the inshore GOM fleet due to the common pool trimester quotas that go into effect on May 1, 2012. The GOM cod stock assessment was not available before the December 1 deadline and indicates the need for a significant reduction in the ACL for this stock. Because permit holders were not aware of this significant reduction before the deadline, NMFS has determined that extending the deadline is appropriate to allow these vessels to reconsider whether to join a sector in light of the new assessment. Please note, however, that it is at the sector's discretion as to whether it will allow new members to join their sector for FY 2012.

Sector EA

The Administrative Procedure Act (5 U.S.C. 553) requires advance notice of rulemaking and opportunity for public comment. NMFS is providing a 15-day comment period for this rule. A longer comment period would be impracticable and contrary to the public interest because a final rule must be published prior to the start of FY 2012 on May 1. Vessels enrolled in a sector may not fish in FY 2012 unless their sector operations plan is approved. Therefore, if the final rule is not published prior to May 1, the permits enrolled in sectors must either stop fishing until their operations plan is approved, or elect to fish in the common pool for the entirety of FY 2012. Both of these options would have negative impacts for the permits enrolled in the sectors.

In order to comply with NEPA, one EA was prepared encompassing all 19 operations plans. The sector EA is tiered from the Environmental Impact Statement (EIS) prepared for Amendment 16. The EA examines the biological, economic, and social impacts unique to each sector's proposed operations, including requested exemptions, and provides a cumulative effects analysis (CEA) that addresses the combined impact of the direct and indirect effects of approving all proposed sector operations plans. The summary findings of the EA conclude that each sector would produce similar effects that have non-significant impacts. Visit *http://www.regulations.gov* to view the EA prepared for the 19 sectors that this rule proposes to approve.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This action is exempt from review under Executive Order (E.O.) 12866.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. Size standards have been established for all for-profit economic activities or industries in the North American Industry Classification System. The SBA defines a small business in the commercial fishing and recreational fishing sector, as a firm with receipts (gross revenues) of up to $4 million.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared, as required by section 603 of the RFA. The Final Regulatory Flexibility Analysis (FRFA) will be prepared after the comment period for this proposed rule, and will be published with the final rule. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. The IRFA consists of this section, the **SUMMARY** section of the preamble of this proposed rule, and the EA prepared for this action. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in Sections 1.0, 2.0, and 3.0 of the EA prepared for this action, and is not repeated here. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

This action will likely affect 843 entities, which represents the number of permits enrolled in sectors that have requested additional exemptions. Each of these permits would be considered a small entity, based on the definition as stated above. The economic impact resulting from this action on these small entities is positive, since the action, if implemented, would provide additional operational flexibility to vessels participating in NE multispecies sectors for FY 2012. In addition, this action would further mitigate negative impacts from the implementation of Amendment 16, FW 44, and FW 45, which have placed additional effort restrictions on the groundfish fleet.

Description of the Reasons Why Action by Agency Is Being Considered

The flexibility afforded sectors includes exemptions from certain specified regulations as well as the ability to request additional exemptions. Sector members no longer have groundfish catch limited by DAS allocations and are instead limited by their available ACE. In this manner, the economic incentive changes from maximizing the value of throughput of all species on a DAS to maximizing the value of the sector ACE, which places a premium on timing landings to market conditions, as well as changes in the selectivity and composition of species

landed on fishing trips. Further description of the purpose and need for the proposed action is contained in Section 2.0 of the EA prepared for this action.

Over the past decade, there has been a significant amount of consolidation in the NE groundfish fishery in response to management measures to end overfishing of, and to rebuild, groundfish stocks. The number of active vessels steadily declined during the period 2007–2010. The number of active groundfish vessels making any fishing trips declined by 16.8 percent between 2007 (1,082 vessels) and 2010 (900 vessels). A 7.5-percent decline (i.e., 73 vessels) occurred between 2009 and 2010. Similarly, from 2007 to 2010 there was a 31.6-percent decline in the number vessels making at least one groundfish trip (658 to 450), with a 20.5% reduction (116 vessels) between 2009 and 2010. It is not possible to reliably identify the cause for the reduction in the number of active vessels that has been occurring for a number of years, including before 2007.

Amendment 13 implemented DAS leasing and transfer programs, allowing vessels to fish the DAS of multiple other vessels. Amendment 16 implemented a number of measures that facilitated the consolidation of fishing effort to fewer active fishing vessels as a means to reduce the operational expenses for owners of multiple permits. For example, that action allows owners of permits held in CPH and not associated with an actual fishing vessel to participate in sectors (i.e., contribute the CPH's landing history to calculate a sector's yearly allocation of ACE) and lease DAS. Further, it is not possible to identify the extent to which inactive vessels in sectors may benefit if other sector vessels harvest their allocation.

In 2010, 447 vessels (33 percent) were inactive (no landings). Of these inactive vessels, 296 were sector vessels and 151 were common pool vessels. The number of inactive vessels in 2010 can be compared to the number of inactive vessels in other years: 331 vessels (32 percent) in 2007, 398 vessels (28 percent) in 2008, and 408 vessels (30 percent) in 2009. Some vessel inactivity may be due to participation in DAS leasing or transfer programs and/or internal sector management decisions. Data are not currently available to evaluate how inactive vessels in sectors may have benefited from agreeing to have other vessels catch the sector's allocation.

The recent implementation of ACLs and accountability measures (AM), and the expanded use of sectors under Amendment 16, has affected fishing patterns in ways that cannot yet be quantified and analyzed. Sector measures were intended to provide a mechanism for vessels to pool harvesting resources and consolidate operations in fewer vessels, if desired, and to provide a mechanism for capacity reduction through consolidation. Reasons why fewer vessels fished in FY 2010, in comparison to FY 2009, may be related to owners with multiple vessels fishing fewer vessels. It is also likely that some vessels that have not landed groundfish have received revenue from leasing their groundfish allocation or have been fishing in other fisheries. Thus, fewer vessels are actively fishing for, and landing, regulated species and ocean pout, with 10 percent of the fishing vessels earning more than half of the revenues from such stocks since 2005, leading to a seemingly continuing trend of consolidation in the fishery. However, this trend began before the implementation and expansion of the sector program, and based on limited data available to date, the trend is not significantly out of proportion to FYs prior to the expansion of sector management by Amendment 16.

The Objectives and Legal Basis for the Proposed Action

The objective of the proposed action is to authorize the operations of 19 sectors in FY 2012, and to allow the benefits of sector operations to accrue to 843 permits enrolled in sectors and the New England communities where they dock and land. The legal basis for the proposed action is the NE Multispecies FMP and promulgating regulations at § 648.87.

Estimate of the Number of Small Entities

The SBA size standard for commercial fishing (North American Industry Classification System code 114111) is $4 million in annual sales. Available data indicate that, based on 2005–2007 average conditions, median gross annual sales by commercial fishing vessels were just over $200,000, and no single fishing entity earned more than $2 million annually. Although NMFS acknowledges there may be entities that, based on rules of affiliation, would qualify as large business entities, due to lack of reliable ownership affiliation data we cannot apply the business size standard based on affiliation at this time. For this action, since available data are not adequate to identify affiliated vessels, each operating unit is considered a small entity for purposes of the RFA, and, therefore, there is no differential impact between small and large entities. The maximum number of entities that could be affected by the proposed exemptions is 843 permits—the number of vessels enrolled in the 19 sectors that have submitted an operations plan for FY 2012. Since individuals may withdraw from a sector at any time prior to the beginning of FY 2012, the number of permits participating in sectors on May 1, 2012, and the resulting sector ACE allocations, are likely to change. Additionally, new permit holders who acquire their permits through an ownership change that occurred after December 1, 2011, may enroll their permit in a sector or change the permit's sector affiliation through April 30, 2012.

Reporting, Recordkeeping and Other Compliance Requirements

This proposed rule contains no collection-of-information requirement subject to the Paperwork Reduction Act. The proposed action reduces reporting requirements compared to the no-action alternative. Exemptions implemented through this action would be documented in a LOA issued to each vessel participating in an approved sector. The exemptions from the 20-day spawning block and the 120-day gillnet block would reduce the reporting burden for sector vessels, because exemptions from these requirements eliminate the need to report the blocks to the NMFS Interactive Voice Response system.

Sector vessels receiving an exemption from the gillnet limit (up to 150 nets) would also be exempt from current tagging requirements, and would instead be required to tag gillnets with one tag per net. Compliance with the tagging requirement would not necessarily require sector vessels to purchase additional net tags, as each vessel is already issued up to 150 tags. However, sector vessels that have not previously purchased the maximum number of gillnet tags may find it necessary to purchase additional tags to comply with this requirement at a cost of $1.20 per tag.

The exemption to allow a vessel to haul another vessel's gillnet gear would require each vessel to tag all gear it is authorized to haul. Because of the existing 150-tag limit, no additional tags could be purchased.

The exemption from the limit on the number of hooks does not involve reporting requirements, but may result in increased costs for hooks and rigging (groundline, gangions, anchors) if a vessel chooses to increase the amount of gear fished. Circle hooks of the legal minimum size (12/0) cost about $0.19 each without rigging.

The GOM Sink Gillnet exemption does not involve additional reporting requirements. However, to fully utilize this exemption, sector vessels would need to purchase 6-inch (15.2-cm) mesh gillnet nets. At the time this IRFA was prepared, no cost information was available for a 6-inch (15.2-cm) mesh gillnet panel. However, the cost of a 6.5-inch (16.5-cm) mesh 300-ft (91.4-m) gillnet panel, complete with floats and break-away links, is estimated at $310. The quantity of 6-inch (15.2-cm) mesh gillnets purchased by a vessel to participate in this program would depend on the vessel's gillnet designation (a Day gillnet vessel would have a 150-net limit) and the perceived economic benefits of utilizing the exemption, which may be based on market conditions.

Exempting sectors from the requirement to submit a daily catch report for all vessels participating in the CA I Hook Gear Haddock SAP will not change the reporting burden of individual participating vessels, as the vessels would merely change the recipient of their current daily report.

Other exemptions proposed in this action involve no additional reporting requirements. Sector reporting and recordkeeping regulations do not exempt participants from state and Federal reporting and recordkeeping, but are mandated above and beyond current state and Federal requirements. A full list of compliance, recording, and recordkeeping requirements can be found in the final rules implementing Amendment 16, each approved FY 2011 sector operations plan, and in the draft FY 2012 sector operations plans.

Duplication, Overlap or Conflict With Other Federal Rules

The proposed action is authorized by the regulations implementing the NE Multispecies FMP. It does not duplicate, overlap, or conflict with other Federal rules.

Alternatives Which Minimize Any Significant Economic Impact of Proposed Action on Small Entities

The proposed action would create a positive economic impact for the participating sector vessels because it would mitigate the impacts from restrictive management measures implemented under NE Multispecies FMP. Little quantitative data on the precise economic impacts to individual vessels is available. The *2010 Final Report on the Performance of the Northeast Multispecies (Groundfish) Fishery (May 2010–April 2011)* (copies are available from NMFS, see **ADDRESSES**) documents that all measures of gross revenue per trip and per day absent in 2010 were higher for the average sector vessel and lower for the average common pool vessel. However, the report stipulates this comparison is not useful for evaluating the relative performance of DAS and sector–based management because of fundamental differences between these groups of vessels, which were not accounted for in the analyses. Accordingly, quantitative analysis of the impacts of sector operations plans is still limited. NMFS anticipates that by switching from effort controls of the common pool regime to operating under a sector ACE, sector members will remain economically viable while adjusting to changing economic and fishing conditions. Thus, the proposed action provides benefits to sector members that they would not have under the No Action Alternative.

Economic Impacts on Small Entities Resulting From Proposed Action

The EIS for Amendment 16 compares economic impacts of sector vessels with common pool vessels and analyzes costs and benefits of the universal exemptions. The final rule for the approval of the FY 2010 sector operations plans and contracts (75 FR 18113, April 9, 2010) and its accompanying EAs discussed the economic impacts of the exemptions requested by sectors that year. The final rule for the supplemental sector rule (75 FR 80720, December 23, 2010) and its accompanying supplemental EA discussed the impacts of additional exemptions requested by sectors. The final rule for the approval of the FY 2011 sector operations plans and contracts (76 FR 23076, April 25, 2011) and its accompanying EA discussed the economic impacts of the exemptions requested by sectors that year.

The EA prepared for this rule evaluates the impacts of each exemption individually relative to the no-action alternative (i.e., no sectors are approved), and the exemptions may be approved or disapproved individually or as a group. The impacts associated with the implementation of each of the exemptions proposed in this rule are analyzed as if each exemption would be implemented for all sectors; however, each exemption will only be implemented for the sector(s) which requested that exemption.

Increased ''operational flexibility'' generally has positive impacts on human communities as sectors and their associated exemptions grant fishermen some measure of increased operational flexibility. By removing the limitations on vessel effort (amount of gear used, number of days declared out of fishery, trip limits and area closures) sectors help create a more simplified regulatory environment. This simplified regulatory environment grants fishers greater control over how, when, and where they fish, without working under increasingly complex fishing regulations with higher risk of inadvertently violating one of the many regulations. The increased control granted by the sectors and their associated exemptions may also allow fishermen to maximize the ex-vessel price of landings by timing them based on the market. Generally, increased operational flexibility can result in reduced costs and/or increased revenues. All exemptions contained in the proposed FY 2012 sector operations plans are expected to generate positive social and economic effects for sector members and ports. In general, profits can be increased by increasing revenues or decreasing costs. Similarly, profits decrease when revenues decline or costs rise. The following discussion concentrates on cost and revenues in order to focus on the mechanism by which profits are expected to change due to the exemptions granted by this action.

Exemption From the Day Gillnet 120-Day Block Out of the Fishery

Existing regulations require that vessels using gillnet gear remove all gillnet gear from the water for 120 days per year. Under an output-control management system, this type of input control is unnecessary. Many affected vessel owners have purchased additional vessels in order to be able to fish continuously. The exemption from the 120-day block allows sector members to reduce costs by retiring the redundant vessel. Furthermore, this exemption may allow sector vessels to take advantage of other exemptions, such as the exemption from the GB Seasonal Closure in May and portions of the GOM Rolling Closure Areas.

Exemption From the 20-Day Spawning Block Out of the Fishery

Exemption from the 20-day spawning block would improve operational flexibility by allowing participants to match trip planning decisions to environmental and economic conditions. The increased operational flexibility may result in higher revenues (improved timing of delivery to market) or lower costs for participating vessels.

Exemption From the Limit on the Number of Nets for Day Gillnet Vessels

This exemption would increase operational flexibility by allowing participating sector members to deploy

fishing gear according to operational and market needs. The increased flexibility is likely to result in higher revenues or lower costs for participating vessels.

Exemption From the Prohibition on a Vessel Hauling Another Vessels' Gillnet Gear

This community fixed-gear exemption would allow sector vessels in the Day gillnet category to share gillnet gear. This exemption would reduce the total amount of gear that would have to be purchased and maintained by participating sector members, resulting in lower costs and possibly lower amount of gear fished.

Exemption From the Limitation on the Number of Gillnets That May Be Hauled on GB When Fishing Under a Groundfish/Monkfish DAS

This exemption would increase operational flexibility by allowing a sector vessel to haul its monkfish gillnets and groundfish gillnets on the same trip. This exemption may reduce costs for these sector participants.

Exemption From the Limitation on the Number of Hooks That May Be Fished

This exemption would increase operational flexibility by allowing operators to adapt to environmental and economic conditions. This exemption may result in higher revenues or reduced costs.

Exemption From DAS Leasing Program Length and Horsepower Restrictions

This exemption would increase operational flexibility by allowing participating sector members to deploy fishing gear according to operational and market needs. The increased operational flexibility is likely to result in either higher revenues or lower costs for participating vessels. Because DAS are no required while fishing for groundfish, vessels participating in other fisheries (e.g., monkfish) which require the use of DAS are likely to be positively impacted by this exemption.

GOM Sink Gillnet Exemption (January Through April)

This exemption would allow sector members to use 6-inch (15.2-cm) mesh gillnets in the GOM RMA from January 1, 2013, through April 30, 2013. This exemption will allow participating sector vessels to retain more GOM haddock and increase revenues. To take advantage of this exemption, participating sector vessels would need to purchase 6-inch (15.2-cm) mesh gillnets; however, this gear change would be voluntary and the gear would be adopted only if the vessels anticipated positive returns from the switch. In FY 2010, 34.7 percent of the available GOM haddock ACE was not caught.

GOM Sink Gillnet Exemption (May)

This exemption would allow vessels to use 6-inch mesh gillnets in the GOM RMA from May 1, 2012, through May 31, 2012. This exemption will allow participating sector vessels to retain more GOM haddock and increase revenues. To take advantage of this exemption, participating sector vessels will need to purchase 6-inch mesh gillnets; however, this gear change would be voluntary and this gear would be adopted only if anticipated higher profits. In FY 2010, 34.7% of the available GOM haddock ACE was not caught.

Exemption From Prohibition of Discarding Legal-Size Allocated Species

Sector vessels are required to retain legal-size unmarketable fish, which must be stored on the vessel while at sea. This requirement may create unsafe work conditions and reduce safety at sea. In addition, sector vessels must determine a method of disposal for landed unmarketable fish. An exemption from this regulation would allow sector vessels to discard unmarketable fish, increasing flexibility, improving safety conditions at sea, and reducing costs associated with disposing of the landed unmarketable fish.

Exemption From the Requirement That the Sector Manager Submit Daily Catch Reports for the CA I Hook Gear Haddock SAP

Eliminating the daily catch reporting by sector managers would reduce the administrative burden on the sector managers. The reporting burden of individual participating vessels remains unchanged. In addition to reducing administrative burden, this exemption may result in slightly lower operating costs for sectors.

Exemption From the Trawl Gear Requirements in the U.S./Canada Management Area

This exemption would allow the use of any groundfish trawl gear, rather than approved conservation gears, provided the gear conforms to regulatory requirements for using trawl gear to fish for groundfish in the GB RMA. This exemption would result in greater operational flexibility to participating sector vessels. This increased operational flexibility may translate into lower costs if vessels can reduce the amount of gear, effort or type of gear necessary to catch groundfish in the U.S./Canada Management Area.

Exemption From the Requirement To Power a VMS While at the Dock

Maintaining a VMS signal while at the dock, or tied to a mooring, requires constant power be delivered to the vessel or constant use of onboard generators. This exemption will reduce the operating costs for fishing operations and would result in some improved profitability.

Exemption From DSM Requirements for Handgear A-Permitted Sector Vessels, Vessels Fishing West of 72°30′ W. Long., and Vessels on Monkfish DAS When Using 10-Inch (25.4-cm) or Greater Mesh in the Monkfish SFMA

FW 45 revised DSM requirements and stipulated that sectors must comply with any DSM program specified by NMFS in FY 2012. For FY 2012 there is no required DSM coverage because NMFS will not be funding DSM. This exemption would reduce the regulatory cost and burden of any DSM coverage level above zero. The vessels qualifying for these exemptions generally are the smallest operations, or have the smallest amount of groundfish catch, and so would otherwise be disproportionately burdened compared to larger operations.

Exemption From Seasonal Restriction for the Eastern U.S./Canada Haddock SAP

The Eastern U.S./Canada Haddock SAP was implemented by FW 40A in 2004 to provide an opportunity to target haddock. In 2006, FW 42 shortened the season of this SAP to August 1 through December 31 to reduce cod catch. For sector vessels, the SAP provides access to the northern tip of CA II, which may increase haddock catch and revenue for fishermen.

Exemption From Seasonal Restriction for the CA II Yellowtail Flounder/Haddock SAP

The CA II Yellowtail Flounder/Haddock SAP was implemented by Amendment 13 in 2004 to provide an opportunity to target yellowtail flounder in CA II. In 2005, FW 40B shortened the season of this SAP to July 1 through December 31 to reduce interference with spawning yellowtail flounder. Amendment 16 further revised this SAP to allow participating vessels to target haddock from August 1 through January 31. This exemption would increase a sector's operational flexibility and efficiency by allowing the opportunity to fish year-round in the SAP area. It could allow for a greater catch of

haddock and increased revenues for fishermen.

Exemption From the Prohibition on Fishing Inside and Outside the CA I Hook Gear Haddock SAP While on the Same Trip

FW 40A established the CA I Hook Gear Haddock SAP. Multispecies vessels fishing on a trip within this SAP are prohibited from deploying fishing gear outside of the SAP on the same trip when they are declared into the SAP. This exemption would increase operational flexibility by allowing sector vessels to fish both inside and outside the SAP on the same trip. This exemption would reduce costs by reducing the amount of travel time to haul gear in the SAP and in other areas.

Exemption From the Maximum ACE Carryover Provision

Each sector is allowed to carry over up to 10 percent of its original ACE allocation of each stock from one fishing year to the next, with the exception of GB yellowtail flounder, to reduce the possibility that a sector may accidentally exceed its allocation while trying to utilize its entire ACE. Allowing sectors to carry over a larger portion of their ACE would provide for greater operational flexibility in when and how they fish during a given fishing year. This could increase revenues of sectors which frequently catch less than 90% of their ACE allocations.

Exemption From the ACE Buffer Provision

At the beginning of each fishing year, NMFS withholds 20 percent of a sector's ACE for each stock for a period of up to 61 days, or longer. Exemption from this provision would increase operational flexibility by allowing more ACE to be available at the beginning of the fishing year. This effect is expected to be greatest for stocks which are seasonally available early in the fishing year.

Exemption From the 6.5-Inch (16.5-cm) Minimum Mesh Size Requirement for Trawl Nets

This exemption would allow sector vessels to use 6-inch (15.2-cm) mesh codends on trawl nets to target redfish. The exemption could increase the operational flexibility of sector vessels and could increase revenues of sector fishermen if they are able to increase the catch rate of redfish.

Exemption From the 18-Inch (45.7-cm) Minimum Fish Size Provision for Haddock

This restriction includes whole fish or any part of a fish while possessed on board a vessel, with the exception of a small amount of fish (up to 25 lb (11.3 kg)) that each person on board may retain for at-home consumption. This exemption would increase operational flexibility by allowing vessels to land headed and gutted haddock which are less than 18 inches (45.7 cm). Vessels would be able to store more fish in the hold and may land more edible meat by processing and removing undesirable parts of the fish at sea. Vessel revenues increase if higher prices are received for processed fish. However, few vessels are currently equipped to take advantage of this exemption. Other vessels would need to make voluntary upgrades to their vessels in order to take advantage of this regulation.

Exemption From the Prohibition on a Vessel Hauling Another Vessel's Hook Gear

This exemption would reduce the total amount of gear that would have to be purchased and maintained by participating sector members, resulting in lower costs and a possible reduction in total gear fished.

Exemption From the Requirement To Declare Intent To Fish in the Eastern U.S./Canada SAP and the CA II Yellowtail Flounder/Haddock SAP Prior To Leaving the Dock

Multispecies vessels are currently required to declare that they will be fishing in the Eastern U.S./CA Haddock SAP or the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock. The requested exemption would reduce the administrative burden of declaring intent to fish and increase operational flexibility by allowing the vessel to make trip planning decisions while at-sea. This exemption could reduce costs by reducing the amount of travel time to fish in the SAP without first returning to port.

Other Significant Alternatives

There were several exemptions requested by the sectors for FY 2012 that the regulations implemented by Amendment 16 prohibited NMFS from considering. NMFS also received requests for exemptions that NMFS previously disapproved in FY 2010 or FY 2011; however, no new data or information has become available that would convince NMFS to reconsider the previously disapproved exemptions further in FY 2012.

Regulations under the Magnuson-Stevens Act require publication of this notification to provide interested parties the opportunity to comment on proposed sector operations plans and TAC allocations.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 9, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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Notices

Federal Register
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for Sturgeon National Wild and Scenic River; Hiawatha National Forest; Delta County, MI

AGENCY: Forest Service, USDA.

ACTION: Notice of availability

SUMMARY: In accordance with Section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, is transmitting the final boundary of the Sturgeon National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Jim Ozenberger, Recreation Program Manager, Hiawatha National Forest, 900 US 2 St. Ignace, MI 49781 Telephone 906–643–7900 x 157.

SUPPLEMENTARY INFORMATION: The Sturgeon Wild and Scenic River boundary is available for review at the following offices: USDA Forest Service, Office of the Chief, 1400 Independence Avenue SW., Washington, DC 20024; USDA Forest Service, Eastern Region, Suite 800, 626 East Wisconsin Avenue, Milwaukee, WI, 53202 and; Hiawatha National Forest, 2727 North Lincoln Road, Escanaba, MI 49829. A detailed legal description is available upon request.

The Michigan Wild and Scenic Rivers Act (Pub. L. 102–249) of March 3, 1991, designated the Sturgeon River, Michigan, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. As specified by law, the boundary will not be effective until ninety days after Congress receives the transmittal.

Dated: February 8, 2012.

Jo Reyer,

Forest Supervisor.

[FR Doc. 2012–3492 Filed 2–14–12; 8:45 am]

BILLING CODE 3410–HE–P

DEPARTMENT OF AGRICULTURE

Forest Service

Request for Applications: The Community Forest and Open Space Conservation Program

AGENCY: Forest Service, USDA.

ACTION: Request for applications.

SUMMARY: The Department of Agriculture (USDA), Forest Service, State and Private Forestry, Cooperative Forestry staff, requests applications for the Community Forest and Open Space Conservation Program (Community Forest Program or CFP). This is a competitive grant program whereby local governments, qualified nonprofit organizations, and Indian tribes are eligible to apply for grants to establish community forests through fee simple acquisition of private forest land. The purpose of the program is to establish community forests by protecting forest land from conversion to non-forest uses and provide community benefits such as sustainable forest management, environmental benefits including clean air, water, and wildlife habitat; benefits from forest-based educational programs; benefits from serving as models of effective forest stewardship; and recreational benefits secured with public access.

Eligible lands for grants funded under this program are private forest that is at least five acres in size, suitable to sustain natural vegetation, and at least 75 percent forested. The lands must also be threatened by conversion to non-forest uses, must not be held in trust by the United States on behalf of any Indian tribe or allotment lands, and if acquired by an eligible entity, must provide defined community benefits under CFP and allow public access.

DATES: Application deadline is May 15, 2012 for submitting applications to the State Forester or equivalent official of the Indian tribe and June 14, 2012 for State Forester or equivalent official of the Indian tribe submitting the applications to the Forest Service.

ADDRESSES: All local governments' and qualified nonprofit organizations' applications must be submitted to the State Forester of the State where the property is located. All Indian tribal applications must be submitted to the equivalent official of the Indian tribe. The Forest Service encourages applicants to contact and work with their State Forester or equivalent official of the Indian tribe when developing their proposal. The State Forester's contact information may be found at *http://www.fs.fed.us/spf/coop/programs/loa/cfp.shtml.*

All applicants must also send an email to *communityforest@fs.fed.us* to confirm an application has been submitted for funding consideration.

FOR FURTHER INFORMATION CONTACT: For questions regarding the grant application or administrative regulations, contact Kathryn Conant, Program Manager, 202–401–4072, *kconant@fs.fed.us* or Maya Solomon, Program Coordinator, 202–205–1376, *mayasolomon@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

CFDA number 10.689: To address the goals of Section 7A of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103d), the Forest Service is requesting proposals for community forest projects that protect forest land that has been identified as a national, regional, or local priority for protection and to assist communities in acquiring forestland that will provide public recreation, environmental and economic benefits, and forest-based educational programs.

Detailed information regarding what to include in the application, definitions of terms, eligibility, and necessary prerequisites for consideration can be found in the final program rule, published October 20, 2011 (76 FR 65121–65133), which is available at *www.fs.fed.us/spf/coop/programs/loa/cfp.shtml* and at *www.grants.gov* (Opportunity number CFP–FS–1002011).

Grant Application Requirements

1. Eligibility Information

a. *Eligible Applicants.* A local governmental entity, Indian Tribe (including Alaska Native Corporations), or a qualified nonprofit organization that is qualified to acquire and manage land, as defined at § 230.2 of the final rule. Individuals are not eligible to receive funds through this program.

b. *Cost Sharing (Matching Requirement).* All applicants must demonstrate a 50 percent match of the total project cost. The match can include cash, in-kind services, or donations, which shall be from a non-Federal source. Additional requirements and information are found in § 230.6 of the final rule at *www.fs.fed.us/spf/coop/programs/loa/cfp.shtml.*

c. *DUNS Number.* All applicants shall include a Data Universal Numbering System (DUNS) number in their application. For this requirement, the applicant is the entity that meets the eligibility criteria and has the legal authority to apply and receive the grant. For assistance in obtaining a DUNS number at no cost, call the DUNS number request line 1–866–705–5711 or register on-line at *http://fedgov.dnb.com/webform.*

d. *Central Contractor.* Prospective awardees shall register in the Central Contractor Registration (CCR) database prior to award and remain registered, during performance, and through final payment of any grant resulting from this solicitation. Further information can be found at *www.ccr.gov.* For assistance, contact CCR Assistance Center 1–866–606–8220.

2. Award Information

Total CFP funding anticipated for awards made under this program is $1.35 million. Individual grant applications may not exceed $400,000. Awarding of grants under this program is contingent upon the availability of appropriated funds. If additional funds are appropriated for CFP in 2012, the Forest Service will award additional projects from this solicitation with the additional funds.

No legal liability on the part of the Government shall be incurred until appropriated funds are available and committed by the grant officer for this program to the applicant in writing. The initial grant period shall be for 2 years, and acquisition of lands should occur within that timeframe. The grant may be reasonably extended by the Forest Service when necessary to accommodate unforeseen circumstances in the land acquisition process. Written annual financial performance reports and semi-annual project performance reports shall be required and submitted to the appropriate grant officer.

3. Application Information

Application submission. All local governments and qualified nonprofit organizations' applications must be submitted to the State Forester where the property is located by May 15, 2012. All Indian tribal applications must be submitted to the equivalent official of the Indian tribe by May 15, 2012. The State Forester's contact information may be found at *http://www.fs.fed.us/spf/coop/programs/loa/cfp.shtml.*

All applicants must also send an email to *communityforest@fs.fed.us* to confirm an application has been submitted for funding consideration.

All State Foresters and equivalent officials of the Indian tribes must forward applications to the Forest Service by June 14, 2012.

4. Application Requirements

The following section outlines grant application requirements:

a. The application can be no more than eight pages long, plus no more than two maps (eight inches by eleven inches in size), the grant forms specified in (b), and the draft community forest plan specified in (d).

b. The following grant forms and supporting materials must be included in the application:

(1) An Application for Federal Assistance (Standard Form 424);

(2) Budget information (Standard Form SF 424c—Construction Programs); and

(3) Assurances of compliance with all applicable Federal laws, regulations, and policies (Standard Form 424d—Construction Programs).

c. Documentation verifying that the applicant is an eligible entity and that the land proposed acquisition is eligible lands (see § 230.2 of the final rule).

d. Applications must include the following, regarding the property proposed for acquisition:

(1) A description of the property, including acreage and county location;

(2) A description of current land uses, including improvements;

(3) A description of forest type and vegetative cover;

(4) A map of sufficient scale to show the location of the property in relation to roads and other improvements as well as parks, refuges, or other protected lands in the vicinity;

(5) A description of applicable zoning and other land use regulations affecting the property;

(6) A description of relationship of the property within and its contributions to a landscape conservation initiative; and

(7) A description of any threats of conversion to non-forest uses, including any encumbrances on the property that prevent conversion to nonforest uses.

e. Information regarding the proposed establishment of a community forest, including:

(1) A description of the benefiting community, including demographics, and the associated benefits provided by the proposed land acquisition;

(2) A description of community involvement to-date in the planning of the community forest acquisition and of community involvement anticipated long-term management;

(3) An identification of persons and organizations that support the project and their specific role in establishing and managing the community forest; and

(4) A draft community forest plan. The eligible entity is encouraged to work with the State Forester or equivalent official of the Indian tribe for technical assistance when developing or updating the Community Forest Plan. In addition, the eligible entity is encouraged to work with technical specialists, such as professional foresters, recreation specialists, wildlife biologists, or outdoor education specialists, when developing the Community Forest Plan.

f. Information regarding the proposed land acquisition, including:

(1) A proposed project budget (section § 230.6 of the final program rule);

(2) The status of due diligence, including a signed option or purchase and sale agreement, title search, minerals determination, and appraisal;

(3) Description and status of cost share (secure, pending, commitment letter, etc.). Section § 230.6 of the final rule;

(4) The status of negotiations with participating landowner(s) including purchase options, contracts, and other terms and conditions of sale;

(5) The proposed timeline for completing the acquisition and establishing the community forest; and

(6) Long term management costs and funding source(s).

g. Applications must comply with the Uniform Federal Assistance Regulations (7 CFR Part 3015).

h. Applications must include the forms required to process a Federal grant. Section § 230.7 refers to the grant forms that must be included in the application and the specific administrative requirements that apply to the type of Federal grant used for this program.

5. Forest Service's Project Selection Criteria

a. Using the criteria described below, to the extent practicable, the Forest Service will give priority to applications that maximize the delivery of community benefits, as defined in the final rule (see § 230.2 of the final rule).; and

b. The Forest Service will evaluate all applications received by the State Foresters or equivalent officials of the

Indian tribe and award grants based on the following criteria:

(1) Type and extent of community benefits provided, including to underserved communities. Community benefits are defined in the final program rule as:

(i) Economic benefits such as timber and non-timber products;

(ii) Environmental benefits, including clean air and water, stormwater management, and wildlife habitat;

(iii) Benefits from forest-based experiential learning, including K–12 conservation education programs; vocational education programs in disciplines such as forestry and environmental biology; and environmental education through individual study or voluntary participation in programs offered by organizations such as 4–H, Boy or Girl Scouts, Master Gardeners, etc.;

(iv) Benefits from serving as replicable models of effective forest stewardship for private landowners; and

(v) Recreational benefits such as hiking, hunting and fishing secured through public access.

(2) Extent and nature of community engagement in the establishment and long-term management of the community forest;

(3) Amount of cost share leveraged;

(4) Extent to which the community forest contributes to a landscape conservation initiative;

(5) Extent of due diligence completed on the project, including cost share committed and status of appraisal;

(6) Likelihood that, unprotected, the property would be converted to non-forest uses; and

(7) Costs to the Federal Government.

6. Grant Requirements

a. Once an application is selected, funding will be obligated to the grant recipient through a grant.

b. Local and Indian Tribal Governments should refer to 2 CFR part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87) and 7 CFR part 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) for directions.

c. Nonprofit organizations should refer to 2 CFR part 215 Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations (OMB Circular A–110) and 7 CFR Part 3019 Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations for directions.

d. Forest Service must approve any amendments to a proposal or request to reallocate funding within a grant proposal. If negotiations on a selected project fail, the applicant cannot substitute an alternative site.

e. The grant recipient must comply with the requirements in section § 230.8 in the final rule before funds will be released.

f. After the project has closed, as a requirement of the grant, grant recipients will be required to provide the Forest Service with a Geographic Information System (GIS) shapefile: a digital, vector-based storage format for storing geometric location and associated attribute information, of CFP project tracts and cost share tracts, if applicable.

g. Any funds not expended within the grant period must be de-obligated and revert to the Forest Service.

h. All media, press, signage, and other documents discussing the creation of the community forest must reference the partnership and financial assistance by the Forest Service through the CFP.

i. Additional conditions of the grants awarded under this program are found in section § 230.9 of the final rule.

Dated: December 21, 2011.

Robin L. Thompson,

Associate Deputy Chief, State & Private Forestry.

[FR Doc. 2012–3528 Filed 2–14–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Atlantic Highly Migratory Species Vessel and Gear Marking.

OMB Control Number: 0648–0373.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 8,937.

Average Hours Per Response: Vessel marking, 45 minutes; gear marking (per each type of gear per vessel), 15 minutes.

Burden Hours: 7,936.

Needs and Uses: This request is for an extension of a current information collection.

Under current regulations at 50 CFR 635.6, fishing vessels permitted for Atlantic Highly Migratory Species (HMS) must display their official vessel numbers on their vessels. Flotation devices and high-flyers attached to certain fishing gears must also be marked with the vessel's number to identify the vessel to which the gear belongs. These requirements are necessary for identification, law enforcement, and monitoring purposes.

Specifically, all vessel owners that hold a valid HMS permit under 50 CFR 635.4, other than an HMS Angling permit, are required to display their vessel identification number. Numbers must be permanently affixed to, or painted on, the port and starboard sides of the deckhouse or hull and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

Furthermore, the owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses handline, buoy gear, harpoon, longline, or gillnet, must display the vessel's name, registration number or Atlantic Tunas, HMS Angling, or HMS Charter/Headboat permit number on each float attached to a handline, buoy gear, or harpoon, and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. The vessel's name or number must be at least 1 inch (2.5 cm) in height in block letters or Arabic numerals in a color that contrasts with the background color of the float or high-flyer.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: February 9, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–3433 Filed 2–14–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Manufacturers' Shipments, Inventories, and Orders (M3) Survey.

OMB Control Number: 0607–0008.

Form Number(s): M–3(SD).

Type of Request: Extension of a currently approved collection.

Burden Hours: 17,200.

Number of Respondents: 4,300.

Average Hours Per Response: 20 minutes.

Needs and Uses: The U.S. Census Bureau is requesting an extension of the currently approved collection for the Manufacturers' Shipments, Inventories, and Orders (M3) survey. This survey collects monthly data from domestic manufacturers on Form M–3 (SD), which is mailed at the end of each month. Data requested are shipments, new orders, unfilled orders, and inventories by stage of fabrication. The M3 is currently the only survey that provides broad-based monthly statistical data on the economic conditions in the domestic manufacturing sector. The survey is designed to measure current industrial activity and to provide an indication of future production commitments. The value of shipments measures the value of goods delivered during the month by domestic manufacturers. Estimates of new orders serve as an indicator of future production commitments and represent the current sales value of new orders received during the month, net of cancellations. Substantial accumulation or depletion of backlogs of unfilled orders measures excess (or deficient) demand for manufactured products. The level of inventories, especially in relation to shipments, is frequently used to monitor the business cycle.

This survey provides an essential component of the current economic indicators needed for assessing the evolving status of the economy and formulating economic policy. The Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) has designated this survey as a principal federal economic indicator. The shipments and inventory data are essential inputs to the gross domestic product (GDP), while the orders data are direct inputs to the leading economic indicator series. The GDP and the economic indicator series would be incomplete without these data. The survey also provides valuable and timely domestic manufacturing data for economic planning and analysis to business firms, trade associations, research and consulting agencies, and academia.

The data are used for analyzing short- and long-term trends, both in the manufacturing sector and as related to other sectors of the economy. The data on value of shipments, especially when adjusted for change in inventory, measure current levels of production. New orders figures serve as an indicator of future production commitments. Changes in the level of unfilled orders, because of excess or shortfall of new orders compared with shipments, are used to measure the excess (or deficiency) in the demand for manufactured products. Changes in the level of inventories and the relation of these to shipments are used to project future movements in manufacturing activity. These statistics are valuable for analysts of business cycle conditions including members of the Council of Economic Advisers (CEA), the Bureau of Economic Analysis (BEA), the Federal Reserve Board (FRB), the Department of the Treasury, business firms, trade associations, private research and consulting agencies, and the academic community.

Affected Public: Business or other for-profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 131, 182, 193, and 224.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax ((202) 395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: February 10, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–3496 Filed 2–14–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 9–2012]

Foreign-Trade Zone 202—Los Angeles, CA; Application for Reorganization and Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Board of Harbor Commissioners of the City of Los Angeles, grantee of FTZ 202, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/2009 (correction 74 FR 3987, 1/22/2009); 75 FR 71069–71070, 11/22/2010). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 9, 2012.

FTZ 202 was approved on July 14, 1994 (Board Order 693, 59 FR 37464, 07/22/1994), and expanded or reorganized on August 26, 1996 (Board Order 842, 61 FR 46763, 09/5/1996), on July 9, 1999 (Board Order 1043, 64 FR 38887, 07/20/1999), on April 30, 2004 (Board Order 1331, 69 FR 26065–26066, 05/11/2004), on April 24, 2009 (Board Order 1616, 74 FR 21623–21624, 05/8/2009), on December 20, 2010 (Board Order 1732, 76 FR 86–87, 01/03/2011), and, on August 12, 2011 (Board Order 1779, 76 FR 53115, 08/25/2011).

The zone project currently consists of 20 sites located in Los Angeles, San Bernardino and Riverside Counties as follows: *Site 1* (2,775 acres total)—Port of Los Angeles Harbor Complex, San Pedro; *Site 2* (1.5 acres)—1 World Way, Los Angeles International Airport (1 acre) and 5540 W. 104th Street, Los Angeles (0.5 acres); *Site 4* (353.6 acres)—within the 438-acre Carson Dominguez Technology Center south of the Artesia Freeway, between the Harbor Freeway and I–710, Carson and Rancho Dominguez; *Site 5* (6.13 acres)—3Plus Logistics, 20250 S. Alameda Street, Rancho Dominguez (sunset 4/30/2014); *Site 7* (93 acres)—within the 140-acre Pacific Gateway Center, at the southwest corner of the San Diego

Freeway and Harbor Freeway interchange, Los Angeles; *Site 9* (29.88 acres)—19700 Van Ness Avenue (15.61 acres), 19600 Western Avenue (7.01 acres) and 1451 Knox Street (7.26 acres), Torrance; *Site 10* (325.5 acres)—Watson Industrial Center South, located at the intersection of I–405 and I–110, and bordered by Wilmington Avenue, E. Sepulveda Boulevard, Avalon Boulevard and E. 223rd Street, Carson; *Site 11* (153.79 acres)—Watson Corporate Center, located on the northwest corner of I–405 and S. Alameda Street, and bordered by Wilmington Avenue and E. Dominguez Street, Carson (sunset 12/31/2013); *Site 12* (8 acres)—Schafer Brothers Distribution Center, Inc., 1981 E. 213th Street, Carson; *Site 14* (88 acres)—Port Distribution Center, 300 and 400 Westmont Street, San Pedro; *Site 15* (3.67 acres)—1020 McFarland Avenue, Wilmington; *Site 16* (4.16 acres)—201 W. Carob Street, Compton (sunset 12/31/2013); *Site 19* (18.5 acres)—Young's Market Company, 6711 Bickmore Avenue, Chino (expires 12/31/2015); *Site 20* (141.79 acres)—Park Mira Loma West, 11280 and 11850 Riverside Drive, 4000 Hamner Drive and 11310 Cantu Galleano Drive, Mira Loma; *Site 22* (84 acres)—Redlands Business Center, located at the intersection of San Bernardino Avenue and California Street, Redlands (sunset 12/31/2015); *Site 24* (5 acres)—2200 and 2250 Technology Place, Long Beach; *Site 25* (665.5 acres) (sunset 8/31/2016)—Los Angeles International Airport jet fuel storage and delivery system, 9900 LAXFUEL Road (24 acres), Kinder Morgan Carson Terminal, 2000 E. Sepulveda Boulevard, Carson (119.3 acres), Shell Carson Terminal, 20945 S. Wilmington Avenue, Carson (450 acres), Vopak Marine Terminal, 2200 E. Pacific Coast Hwy, Wilmington (24.6 acres); *Site 26* (2.38 acres)—3Plus Logistics, 2730 El Presidio Street, Carson (sunset 04/30/2014); *Site 27* (0.3 acres)—Howard Hartry, 220 N. Fries Avenue, Wilmington (sunset 12/31/2013); and, *Site 28* (8 acres)—California Cartage Company, 20903 S. Maciel Avenue, Carson.

The grantee's proposed service area under the ASF would be all of Orange County and portions of Los Angeles and San Bernardino Counties, California, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Los Angeles-Long Beach U. S. Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include eight of the existing sites as ''magnet'' sites and eleven of the existing sites as ''usage-driven sites''. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. The applicant is also requesting approval of the following new ''usage-driven'' site: *Proposed Site 29* (1.92 acres)—NNR Global Logistics USA, Inc., 21023 South Main Street, Unit D, Carson (Los Angeles County). In addition, the applicant is requesting to renumber existing Site 9 into three separate usage-driven sites (Sites 9, 30 and 31) as well as to remove existing Site 16, Site 24 and Site 26 from the zone project due to changed circumstances. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 202's authorized subzones.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 16, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 30, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: February 9, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–3571 Filed 2–14–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 10–2012]

Foreign-Trade Zone 107—Polk County, IA; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Iowa Foreign Trade Zone Corporation, grantee of FTZ 107, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09 (correction 74 FR 3987, 1/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 9, 2012.

FTZ 107 was approved by the Board on September 4, 1984 (Board Order 273, 49 FR 35971, 9/13/1984). The current zone project includes the following site: *Site 1* (117 acres)—Des Moines Airport Industrial Park, 10400 Hickman Road, Des Moines.

The grantee's proposed service area under the ASF would be Adair, Adams, Audubon, Boone, Calhoun, Carroll, Cass, Clarke, Dallas, Decatur, Greene, Guthrie, Hamilton, Hardin, Jasper, Lucas, Madison, Mahaska, Marion, Marshall, Monroe, Polk, Poweshiek, Ringgold, Story, Union, Warren, Wayne and Webster Counties, Iowa, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Des Moines Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include the existing site as a ''magnet'' site. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. No usage-driven sites are being requested at this time. Because the ASF only pertains to establishing or

reorganizing a general-purpose zone, the application would have no impact on FTZ 107's authorized subzones.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 16, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 30, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: February 9, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–3573 Filed 2–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 8–2012]

Foreign-Trade Zone 183—Austin, TX; Application for Reorganization Under the Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Foreign Trade Zone of Central Texas, Inc., grantee of FTZ 183, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170–1173, 01/12/09 (correction 74 FR 3987, 01/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 9, 2012.

FTZ 183 was approved by the Board on December 23, 1991 (Board Order 550, 57 FR 42, 1/2/92), and expanded on March 16, 1998 (Board Order 964, 63 FR 13837, 3/23/98), on July 10, 1998 (Board Order 994, 63 FR 39071, 7/21/98), on April 7, 1999 (Board Order 1035, 64 FR 19978, 4/23/99), on March 15, 2001 (Board Order 1143, 66 FR 16650, 3/27/01), and on January 27, 2005 (Board Order 1366, 70 FR 6616–6617, 2/8/05).

The current zone project includes the following sites: *Site 1* (33 acres)—Interchange within the Austin Enterprise Zone, located at Bolm Road and Gardner Road, Austin; *Site 2* (50 acres)—Balcones Research site located in north central Austin at the intersection of Burnett Road and Longhorn Boulevard; *Site 3* (449.9 acres)—Corridor Park II (Dell), Dell Way/IH 35, Round Rock; *Site 4* (47 acres)—Cedar Park site, some 8 miles northwest of the Austin city limits, in Williamson County; *Site 5* (100 acres)—Borroughs, Chandler Road/Cypress Boulevard, Round Rock; *Site 6* (246 acres)—Georgetown site, located along I–35 and U.S. 81, south of downtown Georgetown; *Site 7* (40 acres)—San Marcos site, located within the San Marcos Municipal Airport facility in eastern San Marcos, adjacent to State Highway 21, on the Hays County/Caldwell County line; *Site 8* (200 acres)—MET Center industrial park located between U.S. Highway 183 South and State Highway 71 East in southeast Austin, some 5 miles northwest of the Austin Bergstrom International Airport; *Site 9* (56.4 acres)—Data Products/Nature Conservancy, Montopolis Drive/East Riverside Drive, Austin; *Site 10* (22.6 acres)—Ben White Business Park, South Industrial Drive/Business Center Drive, Austin; *Site 11* (64.5 acres)—Walnut Business Park, US 290/US 183, Austin; *Site 12* (100 acres)—Harris Branch, Harris Branch Parkway/Parmer Lane, Austin; *Site 13* (15 acres)—Hill Partners within the Global Business Park, Rutherford Lane/Cameron Road, Austin; *Site 14* (91 acres)—Corridor Park I (Wayne Dresser), Jarrett Way, Round Rock; *Site 15* (108.5 acres)—Vista Business Park/Bratton, Wells Port Drive/Grand Avenue Parkway, Round Rock; *Site 16* (72.6 acres)—North Park, Grand Avenue Parkway/IH 35, Round Rock; *Site 17* (40 acres)—Harvard, Glenn Drive, Round Rock; *Site 18* (574 acres)—Parmer Lane, E. Parmer Lane/McCallen Pass, Round Rock; *Site 19* (217.9 acres)—Tech Ridge, McCallen Pass/Howard Lane, Round Rock; *Site 20* (58.5 acres)—Wells Branch Industrial Park, Howard Lane/McNiel-Meriltown Road, Round Rock; *Site 21* (45.5 acres)—Metric Center, Metric Boulevard, Round Rock; *Site 22* (38.5 acres)—Crystal Park, E. Old Settlers Boulevard, Round Rock; *Site 23* (116.3 acres)—Westinghouse, Westinghouse Drive/IH 35, Round Rock; and, *Site 24* (30 acres)—Coop Smith & Park Central, County Road 116/111, Round Rock.

The grantee's proposed service area under the ASF would be Bastrop, Caldwell, Hays, Travis and Williamson Counties, Texas. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Austin Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include all of the existing sites as ''magnet'' sites. No usage-driven sites are being requested at this time. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 183's authorized subzones.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 16, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 30, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: February 9, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–3570 Filed 2–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council, Subcommittee on Export Administration; Notice of Open Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on March 1, 2012, 10:00 a.m., and March 2, 2012, 9:00 a.m., at Sheppard Mullin Richter and Hampton LLP, 333 South Hope Street, Los Angeles, California, 90071. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Thursday, March 1

Open Session

1. Export Control Reform Field Hearing.

Friday, March 2

Open Session

1. Welcome and remarks by Chairman and Vice Chair.
2. Presentation of Papers or Comments by the Public.
3. Review of Field Hearing.
4. Discussion/Status of 2012 Workplan.
5. Subcommittee Breakout Sessions.
6. Port of LA Tour.

A limited number of seats will be available for the public sessions on both days. Reservations are not accepted. Early arrival (15–20 minutes) is requested for entry into the facility. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that these materials or comments be forwarded before the meeting to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov.*

For more information, contact Yvette Springer on 202–482–2813.

Dated: February 9, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2012–3582 Filed 2–14–12; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment; Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on March 1, 2012, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Status Reports by Working Group Chairs.
3. Proposals from the Public.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than February 23, 2012.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 21, 2011, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482·2813.

Dated: February 9, 2012.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2012–3579 Filed 2–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on March 20, 2012, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Open Session

1. Opening remarks and introductions.
2. Presentation of papers and comments by the Public.
3. Discussions on results from last, and proposals for next Wassenaar Meeting.
4. Report on proposed and recently issued changes to the Export Administration Regulations.
5. Other business.

Closed Session

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov*, no later than March 13, 2012.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members,

the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on November 21, 2011, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with matters the premature disclosure of which would be likely to frustrate significantly implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: February 9, 2012.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2012–3575 Filed 2–14–12; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Extension of Time Limit for the Final Results of the Second Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 15, 2012.

FOR FURTHER INFORMATION CONTACT: Alexis Polovina or Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3927 or (202) 482–2243 respectively.

Background

On September 12, 2011, the Department of Commerce (''Department'') published in the **Federal Register** the *Preliminary Results* of the antidumping duty administrative review on certain steel nails (''steel nails'') from the People's Republic of China (''PRC'').[1] On December 12, 2011, the Department extended the deadline for the final results in the instant review.[2] Subsequent to the *Preliminary Results,* the Department issued questionnaires requesting more information from the respondents' producers and extended the deadlines for the submission of publicly available information to value the factors of production, as well as for case and rebuttal briefs. The period of review (''POR'') is August 1, 2009, through July 31, 2010. The final results are currently due no later than February 9, 2012.

Extension of Time Limit for the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), requires that the Department issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

The submission of the post-*Preliminary Results* questionnaire responses, along with the extensions of the deadlines for submitting surrogate value data and case/rebuttal briefs, necessitates additional time for the Department to consider the additional information and the arguments raised by parties, many of which involve complex issues. As a result, the Department finds that it is not practicable to issue the final results of this review within the current time limits. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time for the completion of the final results of this review to February 23, 2012.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

[1] *See Certain Steel Nails From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Antidumping Duty Administrative Review and Preliminary Intent To Rescind New Shipper Review,* 76 FR 56147 (September 12, 2011) (''*Preliminary Results*'').

[2] *See Certain Steel Nails From the People's Republic of China: Extension of Time Limit for the Final Results of the Second Antidumping Duty Administrative Review,* 76 FR 77205 (December 12, 2011).

Dated: February 7, 2012.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–3574 Filed 2–14–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Extension of the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 15, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg and Jennifer Meek, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1785 and (202) 482–2778, respectively.

Background

On December 7, 2011, the Department of Commerce (''the Department'') published its preliminary results of the antidumping duty administrative review of circular welded non-alloy steel pipe from the Republic of Korea, covering the period November 1, 2009, through October 31, 2010. *See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of the Antidumping Duty Administrative Review,* 76 FR 76369 (December 7, 2011) (''*Preliminary Results*''). Currently, the final results are due no later than April 5, 2012.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), requires that the Department issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

The Department has determined that it requires additional time to complete this review. In the *Preliminary Results,*

the Department raised an issue regarding the date of sale for U.S. transactions. The Department needs additional time to request information regarding this issue from the respondents, to analyze the information provided, and then to allow for case and rebuttal briefs. Thus, it is not practicable to complete this review by April 5, 2012, and the Department is extending the time limit for completion of the final results by an additional 60 days to June 4, 2012, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: February 8, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–3568 Filed 2–14–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Travel and Tourism Advisory Board; Teleconference Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open teleconference meeting.

SUMMARY: The United States Travel and Tourism Advisory Board (Board) will hold a teleconference meeting to deliberate upon industry input and priorities to provide the Secretary of Commerce in his role as co-chair of the Task Force on Travel and Competitiveness (Task Force), established by Executive Order 13597 *Establishing Visa and Foreign Visitor Processing Goals and the Task Force on Travel and Competitiveness,* as the Task Force works to develop a National Travel and Tourism Strategy (Strategy). The Executive Order was issued by President Barack Obama on January 19, 2012.

DATES: Thursday, March 1, 2012, 11 a.m.–12 p.m. EST

Teleconference Information: Toll Free Number: 800–369–1703. Passcode: 1860176.

All guests are requested to register in advance. Requests for auxiliary aids or pre-registration should be submitted no later than February 22, 2012 to Jennifer Pilat, the United States Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone 202–482–4501, *oacie@trade.gov*. Last minute requests will be accepted, but may be impossible to fill.

FOR FURTHER INFORMATION CONTACT: Jennifer Pilat, the United States Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: oacie@trade.gov.

SUPPLEMENTARY INFORMATION: On January 19, 2012, President Obama signed Executive Order 13597, *Establishing Visa and Foreign Visitor Processing Goals and the Task Force on Travel and Competitiveness.* Section 3, subsection (c) of the Executive Order charges the Task Force to develop a Strategy with recommendations for new policies and initiatives to promote domestic and international travel opportunities throughout the United States with the goal of increasing the United States market share of worldwide travel, including obtaining a greater share of long-haul travel from Brazil, China, and India.

Such recommendations shall include, among other things, strategies to promote visits to the United States public lands, waters, shores, monuments, and other iconic American destinations, thereby expanding job creation in the United States. The Task Force shall also consider recommendations to promote and expand travel and tourism opportunities in rural communities. In addition, the Strategy shall identify any barriers to increasing the United States market share of worldwide travel, and any other related areas of concern. The Executive Order indicates that the Secretary of Commerce shall consider the Board's advice in his role with the Task Force. The Task Force shall deliver the Strategy to the President within 90 days of the date of the Executive Order.

The Executive Order is available at: *https://www.federalregister.gov/articles/2012/01/24/2012-1568/establishing-visa-and-foreign-visitor-processing-goals-and-the-task-force-on-travel-and#p-1.*

The United States Travel and Tourism Advisory Board was re-chartered on August 29, 2011, to advise the Secretary of Commerce on matters relating to the U.S. travel and tourism industry.

While members of the public are welcome to call in and listen to the meeting, there will not be sufficient time available for oral comments from members of the public. Any member of the public may submit pertinent written comments at any time before or after the meeting. Comments may be submitted to Jennifer Pilat at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5 p.m. Eastern Time on February 23, 2012, to ensure transmission to the Board prior to the meeting. In addition to comments for the Board's consideration, the public may provide comment on the National Travel and Tourism Strategy as noted in a separate **Federal Register** Notice.

Dated: February 10, 2012.

Jennifer Pilat,

Executive Secretary, the United States Travel and Tourism Advisory Board.

[FR Doc. 2012–3564 Filed 2–14–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB006

New England Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public hearings.

SUMMARY: The New England Fishery Management Council (Council) will hold eight public hearings to solicit comment on Draft Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP).

DATES: Written public comments must be received on or before 5 p.m. EST, Monday, April, 9, 2012. The hearings will be held between March 2 and March 29, 2012. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The hearings will be held in Rockport, ME; Gloucester, MA; Portsmouth, NH; Fairhaven, MA; Portland, ME; Plymouth, MA; Warwick, RI and Cape May, NJ. For specific locations, see **SUPPLEMENTARY INFORMATION**.

Written comments: Should be mailed to Council office at the address below. Mark on the envelope ''Comments on Draft Herring Amendment 5''. Comments may also be sent via fax to (978) 465–3116 or submitted via email to *comments@nefmc.org* with ''Comments on Draft Herring Amendment 5'' in the subject line. The public hearing document can be obtained by contacting the New England Fishery Management Council at the address below.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: These hearings are being scheduled in accordance with the Magnuson-Stevens Fishery Conservation and Management Act. During or after these hearings, additional opportunities for comments on the Amendment 5 Draft Environmental Impact Statement (DEIS) may be provided in accordance with the National Environmental Policy Act. The agenda for the following eight hearings is as follows: NEFMC staff will brief the public on the herring amendment prior to opening the hearing for public comments. The schedule is as follows:

Amendment 5 Public Hearings: Locations, Schedules, and Agendas

1. *Friday, March 2, 2012 from 9 a.m.–1 p.m.;* Samoset Hotel, 220 Warrenton Street, Rockport, ME 04856; telephone: (207) 594–2511.

2. *Wednesday, March 14, 2012 from 7 p.m.–9 p.m.;* Massachusetts Department of Marine Fisheries Annisquam River Station, 30 Emerson Ave., Gloucester, MA 01930; telephone: (978) 282–0308.

3. *Thursday, March 15, 2012 from 7 p.m.–9 p.m.;* Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300.

4. *Monday, March 19, 2012 from 7 p.m.–9 p.m.;* Seaport Inn, 100 Middle Street, Fairhaven, MA 02719; telephone: (508) 997–1281.

5. *Wednesday, March 21, 2012 from 7 p.m.–9 p.m.;* Holiday Inn by the Bay, 88 Spring Street, Portland, ME, 04101; telephone: (207) 775–2311.

6. *Tuesday, March 27, 2012 from 7 p.m.–9 p.m.;* Radisson Plymouth, 180 Water St., Plymouth, MA 02360; telephone: (508) 747–4900.

7. *Wednesday, March 28, 2012 from 7 p.m.–9 p.m.;* Hilton Garden Inn, One Thurber St., Warwick, RI 02886; telephone: (401) 734–9600.

8. *Thursday, March 29, 2012 from 7 p.m.–9 p.m.;* Congress Hall, 251 Beach Ave., Cape May, NJ 08204; telephone: (609) 884–8421.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**), at least 5 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 10, 2012.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–3557 Filed 2–14–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB007

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Law Enforcement Advisory Panel (LEAP) in conjunction with the Gulf States Marine Fisheries Commission's Law Enforcement Committee (LEC).

DATES: The meeting will convene at 1 p.m. on Tuesday, March 6, 2012 and conclude no later than 5 p.m.

ADDRESSES: The meeting will be held at the Marriott Courtyard Gulfport Beachfront Hotel, 1600 East Beach Blvd., Gulfport, MS 39501.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene the Law Enforcement Advisory Panel along with the Gulf States Marine Fisheries Commission's Law Enforcement Committee to consider the status of recently completed amendments and other regulatory actions as well as the scheduled completion of ongoing actions. The two groups will also receive a presentation regarding issues related to the Gulf Council's Individual Fishing Quota Programs and discuss the National Center for Disaster Fraud/Gulf Coast. They will review the status of Joint Enforcement Agreements and enforcement efforts by the states under these agreements. The LEAP/LEC will also consider having a Summer Work Session to develop a 2013–16 Strategic Plan and a 2013–14 Operations Plan. Finally, the group will discuss Gulf seafood trace and trip ticket enforcement and receive reports of the state and federal members. Other activities related to the Gulf States Marine Fisheries Commission's Interjurisdictional Fisheries Program and Law Enforcement Summary will also be discussed.

The Law Enforcement Advisory Panel consists of principal law enforcement officers in each of the Gulf States, as well as the National Oceanic and Atmospheric Administration (NOAA) Law Enforcement, U.S. Fish and Wildlife Service (FWS), the U.S. Coast Guard, and the NOAA General Counsel for Law Enforcement. A copy of the agenda and related materials can be obtained by calling the Council office at (813) 348–1630.

Although other non-emergency issues not on the agendas may come before the Law Enforcement Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the Law Enforcement Advisory Panel will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) 5 working days prior to the meeting.

Dated: February 10, 2012.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–3558 Filed 2–14–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Gray's Reef National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and

Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Gray's Reef National Marine Sanctuary Advisory Council: Sport diving and charter/commercial fishing. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's Charter.

DATES: Applications are due by March 30, 2012.

ADDRESSES: Application kits may be obtained from Becky Shortland, Council Coordinator (*becky.shortland@noaa.gov,* 10 Ocean Science Circle, Savannah, GA 31411; 912–598–2381). Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Becky Shortland, Council Coordinator (*becky.shortland@noaa.gov*, 10 Ocean Science Circle, Savannah, GA 31411; 912–598–2381.

SUPPLEMENTARY INFORMATION: The sanctuary advisory council was established in August 1999 to provide advice and recommendations on management and protection of the sanctuary. The advisory council, through its members, also serves as liaison to the community regarding sanctuary issues and represents community interests, concerns, and management needs to the sanctuary and NOAA.

Authority: 16 U.S.C. Sections 1431, et seq.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–3465 Filed 2–14–12; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA941

Takes of Marine Mammals Incidental to Specified Activities; St. George Reef Light Station Restoration and Maintenance at Northwest Seal Rock, Del Norte County, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the St. George Reef Lighthouse Preservation Society (SGRLPS) to take marine mammals, by Level B harassment only, incidental to conducting aircraft operations, and lighthouse renovation and light maintenance activities on the St. George Reef Light Station on Northwest Seal Rock (NWSR) in the northeast Pacific Ocean, from the period of February 10, 2012, through April 30, 2012, or during the period of November 1, 2012, through December 31, 2012.

DATES: This authorization is effective from February 10, 2012, through April 30, 2012, and during the period of November 1, 2012, through December 31, 2012.

ADDRESSES: A copy of the IHA and application are available by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. An electronic copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. The following associated documents are also available at the same internet address: Environmental Assessment (EA) prepared by NMFS; and the finding of no significant impact (FONSI). Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, NMFS, Office of Protected Resources, NMFS, (301) 427–8401 or Monica DeAngelis, NMFS Southwest Regional Office, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection of 1972, as amended (MMPA;16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA establishes an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization. NMFS must publish a notice in the **Federal Register** within 30 days of its determination to issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA

defines ''harassment'' as: '' * * * Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Summary of Request

NMFS received an application on October 7, 2011, from the SGRLPS for the taking by harassment, of marine mammals, incidental to conducting aircraft operations and restoration and maintenance activities on the St. George Reef Light Station (Station). NMFS determined that application complete and adequate on October 21, 2011. NMFS made the complete application available for public comment (see **ADDRESSES**) for this IHA.

The SGRLPS aims to: (1) Restore and preserve the Station on a monthly basis (November 1 through April 30, annually); and (2) perform periodic, annual maintenance on the Station's optical light system. The Station, which is listed in the National Park Service's National Register of Historic Places, is located on Northwest Seal Rock (NWSR) offshore of Crescent City, California in the northeast Pacific Ocean.

The specified activities would occur in the vicinity of a possible pinniped haul out site located on NWSR. Acoustic and visual stimuli generated by: (1) Helicopter landings/takeoffs; (2) noise generated during restoration activities (*e.g.,* painting, plastering, welding, and glazing); (3) maintenance activities (*e.g.,* bulb replacement and automation of the light system); and (4) human presence, may have the potential to cause any pinnipeds hauled out on NWSR to flush into the surrounding water or to cause a short-term behavioral disturbance. These types of disturbances are the principal means of marine mammal taking associated with these activities and the SGRLPS has requested an authorization to take 204 California sea lions (*Zalophus californianus*); 36 Pacific Harbor seals (*Phoca vitulina*); 172 Steller sea lions (*Eumetopias jubatus*); and six northern fur seals (*Callorhinus ursinus*) by Level B harassment.

To date, NMFS has issued two, 1-year IHAs to the SGRLPS for the conduct of the same activities from 2009 to 2011. This will be the SGRLPS' third IHA.

Description of the Specified Activity

SGRLPS would conduct the activities (aircraft operations, lighthouse restoration, and light maintenance activities) between February 10, 2012, through April 30, 2012, and during the period of November 1, 2012, through December 31, 2012, at a maximum frequency of one session per month. The duration for each session would last no more than three days (*e.g.,* Friday, Saturday, and Sunday).

Aircraft Operations

Because NWSR has no safe landing area for boats, the restoration activities would require the SGRLPS to transport personnel and equipment from the California mainland to NWSR by a small helicopter. SGRLPS would transport no more than 15 work crew members and equipment to NWSR for each session and estimates that each session would require no more than 36 helicopter landings/takeoffs per month.

Lighthouse Restoration Activities

Restoration activities would include the removal of peeling paint and plaster, restoration of interior plaster and paint, refurbishing structural and decorative metal, reworking original metal support beams throughout the lantern room and elsewhere, replacing glass as necessary, and upgrading the present electrical system. The SGRLPS expects to complete most of the major restoration work within five years.

Light Maintenance Activities

The SGRLPS will need to conduct maintenance on the Station's beacon light at least once or up to two times per year within the work window. Scheduled light maintenance activities would coincide with lighthouse restoration activities conducted monthly during the period of February through April, 2012 and during the period of November through December, 2012. The SGRLPS expects that maintenance activities would not exceed three hours per each monthly session.

Emergency Light Maintenance

If the beacon light fails during the period from February 10, 2012, through April 30, 2012, or during the period of November 1, 2012, through December 31, 2012, the SGRLPS would send a crew of two to three people to the Station by helicopter to repair the beacon light. For each emergency repair event, the SGRLPS would conduct a maximum of four flights (two arrivals and two departures) to transport equipment and supplies. The helicopter may remain on site or transit back to shore and make a second landing to pick up the repair personnel.

In the case of an emergency repair between May 1, 2012, and October 31, 2012, the SGRLPS would consult with the NMFS Southwest Regional Office (SWRO) to best determine the timing of the trips to the lighthouse, on a case-by-case basis, based upon the existing environmental conditions and the abundance and distribution of any marine mammals present on NWSR. The SWRO biologists would have real-time knowledge regarding the animal use and abundance of the NWSR at the time of the repair request and would make a decision regarding when the trips to the lighthouse can be made during the emergency repair time window that would have the least practicable adverse impact to marine mammals. The SWRO would also ensure that the SGRLPS' request for incidental take during emergency repairs would not exceed the number of incidental take authorized in the IHA.

NMFS has outlined the purpose of the program in a previous notice for the proposed IHA (76 FR 79157, December 21, 2011). The planned activities have not changed between the proposed IHA notice and this final notice announcing the issuance of the IHA. For a more detailed description of the authorized action, including aircraft and acoustic source specifications, the reader should refer to the notice for the proposed IHA (76 FR 79157, December 21, 2011).

Comments and Responses

NMFS published a notice of receipt of the SGRLPS' application and proposed IHA in the **Federal Register** on December 21, 2011 (76 FR 79157). During the 30-day comment period, NMFS received comments from the Marine Mammal Commission (Commission) only. The Commission recommended that NMFS issue the requested authorization, provided that the required monitoring and mitigation measures are carried out (*e.g.,* restrictions on the timing and frequency of activities, restrictions on helicopter approaches, timing measures for helicopter landings, and measures to minimize acoustic and visual disturbances) as described in NMFS' December 21, 2011 (76 FR 79157) notice of the proposed IHA and the application. All measures proposed in the initial **Federal Register** notice are included within the authorization and NMFS has determined that they will effect the least practicable impact on the species or stocks and their habitats.

Description of the Specified Geographic Region

The Station is located on a small, rocky islet (41°50′24″ N, 124°22′06″ W) approximately nine kilometers (km) (6.0 miles (mi)) in the northeast Pacific Ocean, offshore of Crescent City, California (Latitude: 41°46′48″ N; Longitude: 124°14′11″ W).

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species likely to be harassed incidental to helicopter operations, lighthouse restoration, and lighthouse maintenance on NWSR are the California sea lion, the Pacific harbor seal, the eastern Distinct Population Segment (DPS) of Steller sea lion, and the eastern Pacific stock of northern fur seal. California sea lions and Pacific harbor seals are not listed as threatened or endangered under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), nor are they categorized as depleted under the MMPA. Northern fur seals are not listed as threatened or endangered under the ESA. However, they are categorized as depleted under the MMPA. Last, the eastern DPS of Steller sea lion, is listed as threatened under the ESA and is categorized as depleted under the MMPA.

NMFS has presented a more detailed discussion of the status of these stocks and their occurrence in the northwestern Pacific Ocean, as well as other marine mammal species that may occur around NWSR in the notice for the proposed IHA (76 FR 79157, December 21, 2011).

Potential Effects of the Activity on Marine Mammals

Acoustic and visual stimuli generated by: (1) Helicopter landings/takeoffs; (2) noise generated during restoration activities (*e.g.,* painting, plastering, welding, and glazing); and (3) maintenance activities (*e.g.,* bulb replacement and automation of the light system) may have the potential to cause Level B harassment of any pinnipeds hauled out on NWSR. The effects of sounds from helicopter operations and/or restoration and maintenance activities might include one of the following: temporary or permanent hearing impairment or behavioral disturbance (Southall, *et al.,* 2007).

There is a dearth of information on acoustic effects of helicopter overflights on pinniped hearing and communication (Richardson *et al.,* 1995) and to NMFS' knowledge, there has been no specific documentation of temporary or permanent hearing impairment in free-ranging pinnipeds exposed to helicopter operations during realistic field conditions. Any noise attributed to the SGRLPS' helicopter operations on NWSR would be short-term (approximately five minutes per trip) and NMFS would expect the ambient noise levels to return to a baseline state when helicopter operations have ceased for the day. NMFS does not expect that the increased received levels of sound from the helicopter would cause temporary or permanent hearing impairment because the pinnipeds would flush before the helicopter approached NWSR; thus increasing the distance between the pinnipeds and the received sound levels on NWSR during the specified activities.

Some behavioral disturbance is expected; however NMFS expects the disturbance to be localized and short-term. If pinnipeds are present on NWSR, Level B behavioral harassment of pinnipeds may occur during helicopter landing and takeoff from NWSR due to the pinnipeds temporarily moving from the rocks and lower structure of NWSR into the sea due to the noise and appearance of helicopter during approaches and departures. It is expected that all or a portion of the marine mammals hauled out on the island will depart the rock and move into the water upon the initial helicopter approach.

The notice of the proposed IHA (76 FR 79157, December 21, 2011) provided a discussion of: (1) The sound levels produced by the helicopter; (2) behavioral reactions of pinnipeds to helicopter operations and light construction noise; (3) hearing impairment and other non-auditory physical effects; (4) behavioral reactions to visual stimuli; (5) and specific observations gathered during previous monitoring of the marine mammals present on NWSR. NMFS refers readers to the reader to the SGRLPS' application and NMFS' EA for additional information on the behavioral reactions (or lack thereof) by pinnipeds to aircraft overflights.

Mortality

Sudden movement of large numbers of animals may cause a stampede. In order to prevent such stampedes from occurring within the sea lion colony, NMFS would require certain mitigation requirements and restrictions, such as controlled helicopter approaches and limited access period during the pupping season. As such, and because any pinnipeds nearby likely would avoid the approaching helicopter, NMFS anticipates that there will be no instances of injury or mortality during the project.

Anticipated Effects on Marine Mammal Habitat

The NMFS expects that there will be no long- or short-term physical impacts to pinniped habitat on NWSR. NMFS provided a detailed discussion of the potential effects of this action on marine mammal habitat in the notice of the proposed IHA (76 FR 79157, December 21, 2011). The SGRLPS proposes to confine all restoration activities to the existing structure which would occur on the upper levels of the Station which are not used by marine mammals. The SGRLPS would remove all waste, discarded materials and equipment from the island after each visit. The activities will not result in any permanent impact on habitats used by marine mammals, including the food sources they use. The main impact associated with the activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

The SGRLPS has based the mitigation measures described herein, to be implemented for the helicopter operations and restoration activities, on the following: (1) Protocols used during the 2010 IHA for helicopter operations and restoration activities as approved by NMFS; (2) recommended best practices in Richardson *et al.* (1995); and (3) reasonable and prudent measures implemented by the terms and conditions of the section 7 ESA Biological Opinion's (BiOp) Incidental Take Statement (ITS).

To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities, the SGRLPS and/or its designees will implement the following mitigation measures for marine mammals:

(1) Limit the time and frequency of the restoration activities;

(2) Employ helicopter approach and timing techniques; and

(3) Avoidance of visual and acoustic contact with marine mammals by the SGRLPS and/or its designees.

Time and Frequency: Lighthouse restoration activities are to be conducted at maximum of once per month between February 10, 2012, through April 30, 2012, or between November 1, 2012, through December 31, 2012. Each restoration session will last no more than three days. Maintenance of the light beacon will occur only in conjunction with restoration activities.

Helicopter Approach and Timing Techniques: The SGRLPS shall ensure that helicopter approach patterns to the lighthouse will be such that the timing techniques are least disturbing to marine mammals. To the extent possible, the helicopter should approach NWSR when the tide is too high for the marine mammals to haulout on NWSR.

Since the most severe impacts (stampede) are precipitated by rapid and direct helicopter approaches, initial approach to the Station must be offshore from the island at a relatively high altitude (*e.g.,* 800–1,000 ft, or 244–305 m). Before the final approach, the helicopter shall circle lower, and approach from area where the density of pinnipeds is the lowest. If for any safety reasons (*e.g.,* wind condition) such helicopter approach and timing techniques cannot be achieved, the SGRLPS must abort the restoration and maintenance activities for that day.

Avoidance of Visual and Acoustic Contact with Marine Mammals: The SGRLPS members and restoration crews shall be instructed to avoid making unnecessary noise and not expose themselves visually to pinnipeds around the base of the lighthouse. Although no impacts from these activities were seen during the 2001 CCR study, it is relatively simple to avoid this potential impact. The door to the lower platform (which is used at times by pinnipeds) shall remain closed and barricaded to all tourists and other personnel.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's mitigation measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's mitigation measures, NMFS has determined that these measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

At least once during the period between February 10, 2012, through April 30, 2012, or during the period of November 1, 2012, through December 31, 2012 a qualified biologist shall be present during all three workdays at the Station. The biologist hired will be subject to approval of NMFS and this requirement may be modified depending on the results of the monitoring report from the 2011 season.

The qualified biologist shall document use of the island by the pinnipeds, frequency, (*i.e.,* dates, time, tidal height, species, numbers present, and any disturbances), and note any responses to potential disturbances. In the event of any observed Steller sea lion injury, mortality, or the presence of newborn pup, the SGRLPS will notify the NMFS SWRO Administrator and the NMFS Director of Office of Protected Resources immediately.

Aerial photographic surveys may provide the most accurate means of documenting species composition, age and sex class of pinnipeds using the project site during human activity periods. Aerial photo coverage of the island shall be completed from the same helicopter used to transport the SGRLPS personnel to the island during restoration trips. A skilled photographer shall take photographs of all marine mammals hauled out on the island at an altitude greater than 300 m (984 ft), prior to the first landing on each visit included in the monitoring program. Photographic documentation of marine mammals present at the end of each three-day work session shall also be made for a before and after comparison. The SGRLPS will forward these photographs to a biologist capable of discerning marine mammal species. Data shall be provided to NMFS in the form of a report with a data table, any other significant observations related to marine mammals, and a report of restoration activities (see Reporting). The original photographs can be made available to NMFS or other marine mammal experts for inspection and further analysis.

Reporting

The SGRLPS personnel will record data to document the number of marine mammals exposed to helicopter noise and to document apparent disturbance reactions or lack thereof. SGRLPS and NMFS will use the data to estimate numbers of animals potentially taken by Level B harassment.

Interim Monitoring Report

The SGRLPS will submit interim monitoring reports to the NMFS SWRO Administrator and the NMFS Director of Office of Protected Resources no later than 30 days after the conclusion of each monthly session. The interim report will describe the operations that were conducted and sightings of marine mammals near the project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring.

Each interim report will provide:

(i) A summary and table of the dates, times, and weather during all helicopter operations, and restoration and maintenance activities.

(ii) Species, number, location, and behavior of any marine mammals, observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to acoustic stimuli associated with the helicopter operations, restoration and maintenance activities.

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

Final Monitoring Report

In addition to the interim reports, the SGRLPS will submit a draft Final Monitoring Report to NMFS no later than 90 days after the project is completed to the Regional Administrator and the Director of Office

of Protected Resources at NMFS Headquarters. Within 30 days after receiving comments from NMFS on the draft Final Monitoring Report, the SGRLPS must submit a Final Monitoring Report to the Regional Administrator and the NMFS Director of Office of Protected Resources. If the SGRLPS receives no comments from NMFS on the draft Final Monitoring Report, the draft Final Monitoring Report will be considered to be the Final Monitoring Report.

The final report will provide:

(i) A summary and table of the dates, times, and weather during all helicopter operations, and restoration and maintenance activities.

(ii) Species, number, location, and behavior of any marine mammals, observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to acoustic stimuli associated with the helicopter operations, restoration and maintenance activities.

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality (*e.g.,* stampede), the SGRLPS shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401 and/or by email to *Michael.Payne@noaa.gov* and *ITP.Cody@noaa.gov* and to the Southwest Regional Stranding Coordinator at (562) 980–3230 (*Sarah.Wilkin@noaa.gov*).

The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with the SGRLPS to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The SGRLPS may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the SGRLPS discovers an injured or dead marine mammal, and the biologist (if present) determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), the SGRLPS will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401 and/or by email to *Michael.Payne@noaa.gov* and *ITP.Cody@noaa.gov* and to the Southwest Regional Stranding Coordinator at (562) 980–3230 (*Sarah.Wilkin@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the SGRLPS to determine whether modifications in the activities are appropriate.

In the event that the SGRLPS discovers an injured or dead marine mammal, and the lead biologist (if present) determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the SGRLPS will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401 and/or by email to *Michael.Payne@noaa.gov* and *ITP.Cody@noaa.gov* and to the Southwest Regional Stranding Coordinator at (562) 980–3230 (*Sarah.Wilkin@noaa.gov*), within 24 hours of the discovery. The SGRLPS will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: '' * * * any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Only take by Level B harassment is anticipated and authorized as a result of the helicopter operations and restoration and maintenance activities on NWSR.

Based on pinniped survey counts conducted by CCR on NWSR in the spring of 1997, 1998, 1999, and 2000 (CCR, 2001), NMFS estimates that approximately 204 California sea lions (calculated by multiplying the average monthly abundance of California sea lions (zero in April, 1997 and 34 in April,1998) present on NWSR by 6 months of the restoration and maintenance activities), 172 Steller sea lions (NMFS' estimate of the maximum number of Steller sea lions that could be present on NWSR with a 95-percent confidence interval), 36 Pacific harbor seals (calculated by multiplying the maximum number of harbor seals present on NWSR (6) by 6 months), and 6 northern fur seals (calculated by multiplying the maximum number of northern fur seals present on NWSR (1) by 6 months) could be potentially affected by Level B behavioral harassment over the course of the IHA. Estimates of the numbers of marine mammals that might be affected are based on consideration of the number of marine mammals that could be disturbed appreciably by approximately 51 hrs of aircraft operations during the course of the activity. These incidental harassment take numbers represent approximately 0.14 percent of the U.S. stock of California sea lion, 0.42 percent of the eastern U.S. stock of Steller sea lion, 0.11 percent of the California stock of Pacific harbor seals, and 0.06 percent of the San Miguel Island stock of northern fur seal. Because of the required mitigation measures and the likelihood that some pinnipeds will avoid the area, no injury or mortality to pinnipeds is expected nor requested.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited);

(3) The context in which the takes occur (*i.e.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

For reasons stated previously in this document and in the notice of the proposed IHA (76 FR 79157, December 21, 2011), the specified activities associated with the SGRLPS' helicopter operations and restoration/maintenance activities are not likely to cause PTS, or other non-auditory injury, serious injury, or death because:

(1) The likelihood that, given sufficient notice through relatively slow helicopter approaches, NMFS expects marine mammals to gradually move away from a noise source that is annoying prior to its becoming potentially injurious; and

(2) The potential for temporary or permanent hearing impairment is relatively low and would likely be avoided through the incorporation of the required monitoring and mitigation measures.

As mentioned previously, NMFS estimates that four species of marine mammals could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are small (each, less than one percent) relative to the population size.

No takes by Level A harassment, serious injury, or mortality are anticipated to occur as a result of the SGRLPS' specified activities, and none are authorized. Only short-term behavioral disturbance is anticipated to occur due to the brief and sporadic duration of the activities; the availability of alternate areas near NWSR for marine mammals to avoid the resultant acoustic disturbance; and limited access to NWSR during the pupping season. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact rates of recruitment or survival.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that the SGRLPS' planned helicopter operations and restoration/maintenance activities, would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the helicopter operations and restoration/maintenance activities will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

The Steller sea lion, eastern Distinct Population Segment is listed as threatened under the ESA and occurs in the action area. NMFS Headquarters' Office of Protected Resources, Permits and Conservation Division conducted a formal section 7 consultation under the ESA with the Southwest Region, NMFS. On January 27, 2010, the Southwest Region issued a Biological Opinion (BiOp) and concluded that the issuance of IHAs are likely to adversely affect, but not likely to jeopardize the continued existence of Steller sea lions. NMFS has designated critical habitat for the eastern DPS of Steller sea lions in California at Año Nuevo Island, Southeast Farallon Island, Sugarloaf Island and Cape Mendocino, California pursuant to section 4 of the ESA (see 50 CFR 226.202(b)). Northwest Seal Rock is neither within nor nearby these designated areas. Finally, the BiOp included an ITS for Steller sea lions. The ITS contains reasonable and prudent measures implemented by terms and conditions to minimize the effects of this take. NMFS has reviewed the 2010 BiOp and determined that there is no new information regarding effects to Stellar sea lions; the action has not been modified in a manner which would cause adverse effects not previously evaluated; there has been no new listing of species or designation of critical habitat that could be affected by the action; and, the action will not exceed the extent or amount of incidental take authorized in the ITS. Therefore, the IHA did not require reinitiation of a Section 7 consultation.

National Environmental Policy Act (NEPA)

To meet NMFS' NEPA requirements for the issuance of an IHA to the SGRLPS, NMFS prepared an Environmental Assessment (EA) in 2010 that was specific to conducting aircraft operations and restoration and maintenance work on the St. George Reef Light Station. The EA, titled ''Issuance of an Incidental Harassment Authorization to Take Marine Mammals by Harassment Incidental to Conducting Aircraft Operations, Lighthouse Restoration and Maintenance Activities on St. George Reef Lighthouse Station in Del Norte County, California,'' evaluated the impacts on the human environment of NMFS' authorization of incidental Level B harassment resulting from the specified activity in the specified geographic region. At that time, NMFS concluded that issuance of an IHA November 1 through April 30, annually would not significantly affect the quality of the human environment and issued a Finding of No Significant Impact (FONSI) for the 2010 EA regarding the SGRLPS' activities. In conjunction with the SGRLPS' 2012 application, NMFS has again reviewed the 2010 EA and determined that there are no new direct, indirect or cumulative impacts to the human and natural environment associated with the IHA requiring evaluation in a supplemental EA and NMFS, therefore, reaffirms the 2010 FONSI. An electronic copy of the EA and the FONSI for this activity is available upon request (see **ADDRESSES**).

Determinations

NMFS has determined that the impact of conducting the specific helicopter operations and restoration activities described in this notice and in the IHA request in the specific geographic region in the northwestern Pacific Ocean may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this action.

Authorization

As a result of these determinations, NMFS has issued an IHA to the SGRLPS to conduct helicopter operations and restoration and maintenance work on the St. George Reef Light Station on Northwest Seal Rock in the northeast Pacific Ocean from the period of February 10, 2012, through April 30, 2012, or during the period of November 1, 2012, through December 31, 2012, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

Dated: February 10, 2012.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–3542 Filed 2–14–12; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities; Proposed Collection, Comment Request

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') seeks public comment on the collection of certain information by the Commission under section 745 of the Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). The Paperwork Reduction Act (''PRA'') requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. Section 745 requires the Commission to seek public comment for not less than 30 days with respect to certain industry filings. This notice solicits comments on the provisions of the Commission's final rulemaking on ''Provisions Common to Registered Entities'' under which the Commission would collect comments on the industry filings by publication of documents related to the filings and a request for comments on the Commission's public Web site.[1]

DATES: Comments must be submitted on or before April 2, 2012.

ADDRESSES: You may submit comments, identified by ''Part 40 Notice and Comment Collection,'' by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.
- *Hand delivery/Courier:* Same as Mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov/search/index.jsp.* Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in § 145.9 of the Commission's regulations.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION OR A COPY CONTACT: Bella Rozenberg, Assistant Deputy Director, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5119 *brozenberg@cftc.gov* or Mathew T. Hargrow, Attorney, Office of the General Counsel, (202) 418–5267, *mhargrow@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they collect or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) as ''the obtaining, causing to be obtained, soliciting * * * facts or opinions by or for any agency, regardless of form or format [from] ten or more persons.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires federal agencies to provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. Under OMB regulations, which implement provisions of the PRA, certain ''facts or opinions that are submitted in response to a general solicitation of comments from the public, published in the **Federal Register** or other publications,'' 5 CFR 1320.3(h)(4), or ''facts or opinions obtained or solicited at or in connection with public hearings or meetings,'' 5 CFR 1320.3(h)(8), are excluded from the OMB approval process.

In the Commission's final rulemaking on provisions common to registered entities,[3] the Commission seeks to implement section 745 of the Dodd-Frank Act,[4] which amends Section 5c the Commodity Exchange Act (CEA) [5] to enhance compliance by registered entities. This section permits a registered entity to elect to list for trading or accept for clearing any new contract or other instrument, or elect to approve and implement any new rule or rule amendment by providing to the Commission a written certification that the new contract, instrument, rule, or rule amendment complies with the CEA. Such rules or rule amendments become effective after ten (10) business days, unless the Commission notifies the registered entity that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with the CEA. Pursuant to section 745 and the final amendments to part 40 of the Commission's regulations,[6] the Commission will provide a not less than a 30-day comment period when it determines that the rule or rule amendment will be stayed. Pursuant to the final rules, the Commission will provide notice of the stay and the request for comment on its Web site, as well as specify the manner in which the public may submit comments.[7]

The Commission initially estimated that approximately 45 entities would be affected by the rule certification procedures.[8] The initial estimate determined that these 45 entities would each have approximately 120 responses per year for a total of 5,400 responses.[9] The Commission has amended these numbers in the final rule such that the estimated number of respondents is increased to 70 entities, the average annual responses by each respondent is decreased to 100. These numbers are based upon comments received regarding the proposed rules as well as changes made by the Commission to streamline the product certification process for certain swap contracts. The Commission anticipates that the

[1] 76 FR 44776, July 27, 2011.

[2] Commission regulations referred to herein are found at 17 CFR Ch. 1 (2010). Commission regulations are accessible on the Commission's Web site, *www.cftc.gov.*

[3] 75 FR 67282, Nov. 2, 2010.

[4] Public Law 111–203, 124 Stat. 1376 (2010).

[5] 7 U.S.C. 7a.

[6] 75 FR 67282, 67296 (Nov. 2, 2010).

[7] *Id.*

[8] *Id.* at 67290.

[9] *Id.*

mandatory responses to the new collection will take approximate 2 hours per response.

The Commission cannot determine with precision how many of the 7,000 responses it expects to receive will be stayed and subject to the notice and comment requirements of section 745 and the part 40 regulations. The Commission anticipates that only a small fraction of these responses would be stayed and subject to a request for comment via Web site notice, and that each of the stayed rules or rule amendments typically will receive not more than 20 comments, a conservative number based on Commission history with industry filings.

Issued by the Commission this 24th day of January, 2012.

David Stawick,

Secretary of the Commission.

[FR Doc. 2012–2068 Filed 2–14–12; 8:45 am]

BILLING CODE P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Publication of FY 2011 Service Contract Inventory

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public availability of FY 2011 Service Contract Inventory.

SUMMARY: In accordance with Section 734 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the Bureau of Consumer Financial Protection (Bureau) is publishing this notice to advise the public of the availability of the FY 2011 service contract inventory. This inventory provides information on service contract actions over $25,000, which the Bureau awarded during FY 2011. The information is organized by function to show how contracted resources were used by the agency to support its mission. The inventory has been developed in accordance with the guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at: *http://www.whitehouse.gov/sites/defualt/files/omb/procuremetn/memo/service-contract-inventories-guidance-11052010.pdf.* The Bureau has posted its inventory and a summary of the inventory on the Bureau's Open Government homepage at the following link: *http://www.consumerfinance.gov/open/,* specifically at *http://www.consumerfinance.gov/wp-content/uploads/2012/01/Appendix-C-FY2011-Inventory-Data-Summary.pdf* and *http://www.consumerfinance.gov/wp-content/uploads/2012/01/Appendix-B-FY2011-Inventory-Data-Details.pdf.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Hoa Crews, Senior Procurement Analyst, Office of Procurement, Consumer Financial Protection Bureau, (202) 435–7422.

Dated: February 8, 2012.

Richard Cordray,

Director.

[FR Doc. 2012–3461 Filed 2–14–12; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

Public Availability of Consumer Product Safety Commission FY 2011 Service Contract Inventory

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (''CPSC'' or ''we''), in accordance with section 743(c) of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117, 123 Stat. 3034, 3216), is announcing the availability of its service contract inventory for fiscal year (''FY'') 2011. This inventory provides information on service contract actions over $25,000 that we made in FY 2011.

FOR FURTHER INFORMATION CONTACT: Donna Hutton, Director, Division of Procurement Services, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Telephone: 301–504–7009; email *dhutton@cpsc.gov.*

SUPPLEMENTARY INFORMATION: On December 16, 2009, the Consolidated Appropriations Act, 2010 (''Consolidated Appropriations Act''), Public Law 111–117, became law. Section 743(a) of the Consolidated Appropriations Act titled, ''Service Contract Inventory Requirement,'' requires agencies to submit to the Office of Management and Budget (''OMB'') an annual inventory of service contracts awarded or extended through the exercise of an option on or after April 1, 2011, and describes the contents of the inventory. The contents of the inventory include:

(A) A description of the services purchased by the executive agency and the role the services played in achieving agency objectives, regardless of whether such a purchase was made through a contract or task order;

(B) The organizational component of the executive agency administering the contract, and the organizational component of the agency whose requirements are being met through contractor performance of the service;

(C) The total dollar amount obligated for services under the contract and the funding source for the contract;

(D) The total dollar amount invoiced for services under the contract;

(E) The contract type and date of award;

(F) The name of the contractor and place of performance;

(G) The number and work location of contractor and subcontractor employees, expressed as full-time equivalents for direct labor, compensated under the contract;

(H) Whether the contract is a personal services contract; and

(I) Whether the contract was awarded on a noncompetitive basis, regardless of date of award.

Section 743(a)(3)(A) through (I) of the Consolidated Appropriations Act. Section 743(c) of the Consolidated Appropriations Act requires agencies to ''publish in the **Federal Register** a notice that the inventory is available to the public.''

Consequently, through this notice, we are announcing that the CPSC's service contract inventory for FY 2011 is available to the public. The inventory provides information on service contract actions over $25,000 that we made in FY 2011. The information is organized by function to show how contracted resources are distributed throughout the CPSC. We developed the inventory in accordance with guidance issued on December 19, 2011 by the OMB. The OMB guidance is available at: *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventory-guidance.pdf.* The CPSC's Division of Procurement Services has posted its FY 2011 inventory summary format, FY 2011 inventory standard format, and the FY 2010 inventory analysis which can be found at our homepage at the following link: *http://www.cpsc.gov/cpscpub/pubs/reports/2011inventories.pdf.*

Dated: February 10, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–3480 Filed 2–14–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–OS–0011]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 16, 2012.

Title Associated Form and OMB Number: Certification of Qualified Products; DD Form 1718; OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 1276.

Responses Per Respondent: 1.

Annual Responses: 1276.

Average Burden Per Response: .30 minutes.

Annual Burden Hours: 638.

Needs and Uses: This collection of information will be used by the preparing activities as well as procuring activities which are responsible for maintaining and purchasing from Qualified Products Lists (QPLs) and Qualified Manufacturers Lists (QMLs).

Affected Public: Business and other for-profit.

Frequency: Biennially.

Respondents Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written request for copies of the information collection proposal should be sent to Ms. Patricia Toppings, 2nd Floor, East Tower, Suite 02G09, Mark Center Drive, Alexandria, VA 22350–3100.

Dated: January 24, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3497 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2007–OS–0129]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1635, or call at (703) 588–3175.

Title and OMB Control Number: Department of Defense Educational Activity (DoDEA) Customer Satisfaction Survey for Sponsors and Students, OMB Control Number 0704–0421.

Needs and Uses: The Department of Defense Education Activity (DoDEA) Customer Satisfaction Survey for Sponsors and Students is a tool used to measure the satisfaction level of sponsors and students with the programs and services provided by DoDEA. This collection is necessary to meet the Government Performance and Results Act of 1993, Public Law 103–62; 107 Stat. 285, that requires agencies to have strategic plans and to consult with affected persons. A major purpose of the regulation is to improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction.

Affected Public: Individuals or households.

Annual Burden Hours: 2,167.

Number of Respondents: 6,500.

Responses per Respondent: 1.

Average Burden per Response: 20 minutes.

Frequency: Biennially.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Department of Defense Education Activity (DoDEA) Customer Satisfaction Survey for Sponsors and Students will be administered to DoDEA students in grades 4–12, and to all parents and/or sponsors of DoDEA students. Participating in the survey is completely voluntary and will be administered through an online, Web-based technology. In order to have comparison between DoDEA parents and parents of students in U.S. public schools, some survey questions from the Phi Delta Kappa/Gallup Poll of the Public's Attitudes Toward Schools will be used. Additional survey questions were developed to address specific issues and needs within DoDEA. The surveys will give parents/sponsors and students an

opportunity to comment on their overall levels of satisfaction with DoDEA schools, as well as on specific programmatic issues related to Department of Defense schools, including curriculum, communication, and technology. The surveys will be administered biennially.

The information derived from these surveys will be used to improve planning efforts at all levels throughout DoDEA. Schools, districts, and areas will use the survey results to gain insight into the satisfaction levels of sponsors and students, which is one of many measures used for future planning of programs and services offered to DoDEA's students. The survey results will also be used as an outcome measure to monitor progress on the goals of the DoDEA Community Strategic Plan.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3512 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2008–OS–0044]

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Logistics Agency, J–651, 8725 John J. Kingman Road, Fort Belvoir, Virginia, 22060, or call (717) 770–6680.

Title; Associated Form; and OMB Number: Project Time Record System; OMB Control Number 0704–0452.

Needs and Uses: Contractors working for the Defense Logistics Agency, Information Operations, J–6, log into an automated project time record system and annotate their time on applicable projects. The system collects the records for the purpose of tracking workload/project activity for analysis and reporting purposes, and labor distribution data against projects for financial purposes; and to monitor all aspects of a contract from a financial perspective and to maintain financial and management records associated with the operations of the contract; and to evaluate and monitor the contractor performance and other matters concerning the contract, i.e., making payments, and accounting for services provided and received. Defense Logistics Agency, Information Operations, J–6, intends to execute this option on new contracts and, as necessary, modify existing contract agreements.

Affected Public: Individuals; businesses or other for profit; not-for-profit institutions.

Annual Burden Hours: 32,500.

Number of Respondents: 2,500.

Responses Per Respondent: 52.

Average Burden Per Response: 15 minutes.

Frequency: Weekly.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are individuals who work for Defense Logistics Agency, Information Operations, J–6, and log into the automated project time record system to annotate their time worked on each project.

Dated: January 12, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3515 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–HA–0098]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions

from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to TRICARE Management Activity, Purchased Care Procurement Branch, 16401 E. Centretech Parkway, Aurora, CO 80011–9066, or telephone (303) 676–3613.

Title; Associated Form; and OMB Number: Health Insurance Claim Form, UB–04 CMS–1450, OMB Number 0720–0013.

Needs and Uses: The information collection requirement is necessary for a medical institution to claim benefits under the Defense Health Program, TRICARE, which includes the Civilian Health and Medical Program for the Uniform Services (CHAMPUS). The information collected will be used by TRICARE/CHAMPUS to determine beneficiary eligibility, other health insurance liability, certification that the beneficiary received the care, and that the provider is authorized to receive TRICARE/CHAMPUS payments. The form will be used by TRICARE/CHAMPUS and its contractors to determine the amount of benefits to be paid to TRICARE/CHAMPUS institutional providers.

Affected Public: Business or other for profit; not-for-profit institutions.

Annual Burden Hours: 2,125,000.

Number of Respondents: 8,500,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This collection instrument is for use by medical institutions filing for reimbursement with the Defense Health Program, TRICARE, which includes the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS). TRICARE/CHAMPUS is a health benefits entitlement program for the dependents of active duty members of the Uniformed Service, and deceased sponsors, retirees and their dependents, dependents of department of transportation (Coast Guard) sponsors, and certain North Atlantic treaty Organization, National Oceanic and Atmospheric Administration, and Public Health Service eligible beneficiaries. Use of the UB–04 CMS1450 continues TRICARE/CHAMPUS commitments to use the national standard claim form for reimbursement of medical services/supplies provided by institutional providers.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3517 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2008–OS–0016]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimation of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Disbursing Management Policy Division, Defense Finance and Accounting Service Kansas City, DFAS–NPD/KC, 1500 E. 95th Street, Kansas City, MO 64197–0030, or call at (816) 926–3600.

Title, Associated Form, and OMB Number: Application Form for Department of Defense (DoD) Stored Value Card (SVC) Programs; DD Form 2887; OMB Control Number 0730–0016.

Needs and Uses: Department of Defense (DoD) Financial Management Regulation 7000.14–R, Volume 5, requires that eligible individuals desiring to enroll in the Navy/Marine Corps Cash and the EagleCash program complete the DD Form 2887. Also used to authorize the transfer of funds from their personal bank accounts to the SVC for the Navy/Marine Cash Program and to provide a means to effect immediate checkage of the individual's pay if a debt occurs.

Affected Public: Individuals or Households; Business or Other For-Profit; Not-for-Profit Institutions; State, Local or Tribal Government.

Annual Burden Hours: 7,416 hours.

Number of Respondents: 44,500.

Responses Per Respondent: 1.

Average Burden Per Response: 10 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Application Form for DoD SVC Programs is used to ascertain pertinent information needed by DoD in order to have the authorization for the transfer of funds from a financial institution to the SVC and to obtain an agreement from the individual for the immediate checkage of their pay in the event a debt to the United States Government occurs.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3519 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2008–OS–0107]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) Defense Commissary Agency, ATTN DOB (Barry White), 1300 E Avenue, Fort Lee, VA 23801–1800, or call (804) 734–8974.

Title, Associated Form, and OMB Control Number: Commissary Evaluation and Utility Surveys—Generic, OMB Control Number 0704–0407.

Needs and Uses: The Defense Commissary Agency will conduct a variety of surveys on an as-needed basis. The survey population will include, but is not limited to, persons eligible to use the commissary throughout the world. The surveys will be used to assess the customer's satisfaction with various aspects of the commissary operation and obtain their opinions of various commissary issues. Surveys will also be used to help determine individual commissary market potential and commissary size requirements.

Affected Public: Individuals or Households, Businesses or Other For Profit.

Annual Burden Hours: 148 Hours.

Number of Respondents: 6,633.

Responses per Respondent: 1.

Average Burden per Response: 1.34 Minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

(All respondents are authorized patrons by DoD regulations, unless otherwise described.)

Commissary Sizing Survey

Surveys will support commissary renovation and new construction. Survey results will be used to help determine market potential and associated commissary size requirements.

Facility Site Decisions

Surveys will support commissary site decisions. Where applicable, commissary user preference can be incorporated into the site location decision process. Patrons will input their answers to questions concerning where they would like a new facility located, as well as give their opinions and concerns that will affect their shopping experience. The survey results will also be used to estimate where the commissary users are located through the use of population density maps.

Patron Migration Survey

These surveys will aid in predicting the impact to commissaries that are near a closing commissary or a commissary that is undergoing some kind of transformation that may cause commissary users to migrate to an alternative nearby commissary. The results will be used to determine requirements for the nearby receiving commissaries.

Commissary Operational Surveys

These surveys will supply information on various processes within the commissaries. The surveyed population could be commissary customers, employees within the Agency, vendors, distributors, or contractors. Persons surveyed will not necessarily be authorized commissary users.

Market Basket Price Surveys

These surveys will be administered to commissary eligible personnel to assess their perception of our savings compared to local commercial supermarkets.

Demographic Surveys

This survey will be conducted, as needed, to assess the demographic make-up of commissary users. The results may be used in conjunction with population data to reveal differences in key demographics such as status, family size, distance from a commissary, age, service membership, and military grade.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3510 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0097]

Proposed Collection; Comment Request

AGENCY: Director of Administration and Management, Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Director of Administration and Management, Office of the Secretary announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Director of Administration and Management, Directorate for Organizational and Management Planning, 1950 Defense Pentagon, Washington, DC 20301–1950; or telephone (703) 697–1142.

Title; Associated Form; and OMB Number: Secretary of Defense Biennial Review of Defense Agencies and DoD Field Activities; OMB Control Number 0704–0422.

Needs and Uses: Section 192(c) of Title 10, U.S.C., requires that the Secretary of Defense review the services and supplies provided by each Defense Agency and DoD Field Activity. The purposes of the Biennial Review are to ensure the continuing need for each Agency and Field Activity and to ensure that the services and supplies provided by each entity is accomplished in a more effective, economical, or efficient manner than by the Military Departments. A standard organizational customer survey process serves as the principal data-gathering methodology in the Biennial Review. As such, it provides valuable information to senior officials in the Department regarding the levels of satisfaction held by the organizational customers of the approximately 30 Defense Agencies and DoD Field Activities covered by the Biennial Review.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 625.

Number of Respondents: 2,500.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: Biennially.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Biennial Review employs a survey to assess organizational-customer satisfaction with the associated business line and addresses overall responsiveness to customer requirements, satisfaction with specific products and services, and quality of coordination with organizational customers. The survey identifies distinct areas of business (business lines) for all Defense Agencies and DoD Field Activities participating in the Review, creates lists of organizational customers specific to each business line, and uses a set of standard evaluation questions across all business lines. Respondents covered by this announcement are private-sector customers of these business lines, such as for the Federal Voting Assistance Program and Defense Finance and Accounting Service.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3513 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2007–OS–0144]

Proposed Collection; Comment Request

AGENCY: Defense Security Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Security Service (DSS) announces a proposed public information collection and seeks public comments on the provision thereof. Comments are invited on: (a) Whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden hours of the information to be collected; and (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal Rule Making Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include agency name, docket number and title for this **Federal Register** document. The general policy of comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contract information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Security Service, Personnel Security Clearance Office, 1340 Braddock Place, Alexandria, VA 22314, or telephone at 703–325–6050.

Title; Associated Form; and OMB Number: Personnel Security Investigation Projection for Industry Survey; DSS Form 232; OMB Number 0704–0417.

Needs and Uses: The execution of the DSS Form 232 is an essential factor in projecting the needs of cleared contractor entities for personnel security investigations (PSIs). This collection of information requests the assistance of the Facility Security Officer to provide projections of the numbers and types of PSIs. The data will be incorporated into DSS' budget submissions and used to track against actual PSI submissions. The form will be distributed electronically via a web-based commercial survey tool.

Affected Public: Business, or other profit and non-profit organizations under Department of Defense Security Cognizance.

Annual Burden Hours: 15,188.

Number of Respondents: 12,150.

Responses per Respondent: 1.

Average Burden Per Response: 75 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Executive Order (EO) 12829, ''National Industrial Security Program (NISP),'' stipulates that the Secretary of Defense shall serve as the Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require or will require access to classified information; and for determining the eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. E.O. 12829 also authorizes the Executive Agent to issue, after consultation with affected agencies, standard forms that will promote the implementation of the NISP.

The Under Secretary of Defense for Intelligence assigned DSS to exercise authority and responsibility for central operational management of DoD PSI workload projections, and monitoring of PSI funding and investigation quality issues for DoD components to include cleared contractors under the National Industrial Security Program. In the past, DSS has relied on historical data for agency budget projections regarding the numbers of PSIs required by cleared contractor entities; however, historical data did not provide a particularly accurate or credible estimate of such workload. In this annual collection of information, DSS asks the Facility Security Officers of cleared contractor entities to provide projections of the numbers and types of personnel security investigations required as well as providing a description of the methodology used for the projections, and the percentage of the cleared contractor's projections representing DoD and non-DoD (NISP) agencies PSI requirements for cleared contractors. The data will be incorporated into DSS' budget submissions and to track against actual cleared contractor's actual PSI submissions.

The Office of Personnel Management (OPM) has responsibility to conduct PSIs and the subsequent periodic reinvestigations (PRs) in accordance with the Code of Federal Regulations, Title 5, Part 736.

Representative of various industry associations, the National Industrial Security Program Policy Advisory Committee (NISPPAC), the Military Services, various elements of the Department of Defense and other Federal Government Agencies are familiar with the annual survey.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3511 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2007–OS–0145]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Military Pay, Standards and Compliance, Defense Finance and Accounting Service, DFAS–JJFMB/CL, 1240 East 9th Street, Room 1781, Cleveland, Ohio 44199, or call at (216) 204–3631.

Title, Associated Form, and OMB Number: Claim Certification and Voucher for Death Gratuity Payment; DD Form 397; OMB Control Number 0704–TBD.

Needs and Uses: This information collection allows the government to collect the signatures and information needed to pay a death gratuity. Pursuant to 10 U.S.C. 1475–1480, a designated beneficiary(ies) or next-of-kin can receive a death gratuity payment for a deceased Service member. This form serves as a record of the disbursement of the death gratuity. The DoD Financial Management Regulation (FMR), Volume 7A, Chapter 36, defines the eligible beneficiaries and procedures for payment of the death gratuity. To provide internal controls for this benefit, and to comply with the above-cited statutes, the information requested is needed to substantiate the receipt of the benefit.

Affected Public: Individuals who are beneficiaries of the Service member's death gratuity.

Annual Burden Hours: 1208.

Number of Respondents: 2416.

Responses per Respondent: 1.

Average Burden per Response: .5 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Service Casualty Office completes the upper portion of the DD Form 397 and then provides the form to the beneficiaries. The beneficiaries complete their portion of the DD Form 397 and then sign the form and have it witnessed. Once the documents are completed they are forwarded to DFAS for payment.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3520 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2007–HA–0004]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of the Assistant Secretary of Defense for Health Affairs (OASD), 5111 Leesburg Pike, Suite 810A, Falls Church, VA 22041–3206, or call (703) 681–0039.

Title; Associated Form; and OMB Number: Defense Medical Human Resources System internet (DMHRSi); OMB Control Number 0720–TBD.

Needs and Uses: DMHRSi is a Joint Medical Information system software application that provides the Military Health System (MHS) with a comprehensive enterprise human resource system with capabilities to manage personnel, manpower, education & training, labor cost assignment and readiness functional areas. It has built-in safeguards to limit access and visibility of personal or sensitive information in accordance with the Privacy Act of 1974. The application will account for everyone in the MHS—Active Duty, Reserves, National Guard, government civilian, contractors and volunteers assigned or borrowed—this also includes non appropriated fund employees and foreign nationals.

Affected Public: Individuals or households.

Annual Burden Hours: 13,280.

Number of Respondents: 40,000.

Responses per Respondent: Four.

Average Burden per Response: .083.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

DMHRSi is one of the premier Joint Medical Information System software applications. It provides the Military Health System (MHS) (including Health Affairs, the TRICARE Management Activity, and the JMISO Office) with a comprehensive enterprise human resource system with capabilities to manage our personnel, manpower, education & training, labor cost assignment, and readiness functional areas. Everyone in the MHS—Active Duty, Reserves, National Guard, government civilian, contractor, and volunteer—assigned or borrowed, will be accounted for in DMHRSi.

Most JMIS products are designed for deployment to medical facilities and field use. DMHRSi has applicability at the headquarters level allowing JMIS to use this product to conduct its own day-to-day workforce management. This comprehensive tool provides the capability to manage positions, develop telephone rosters, monitor individual training status, etc. Deciding to implement DMHRSi within all JMIS program offices, provides a great opportunity to LEAD BY EXAMPLE using the application just as we expect those ''in the field'' to do.

The information in DMHRSi is sometimes personal or sensitive; therefore it contains built-in safeguards to limit access and visibility of this information. DMHRSi uses role-based security so a user sees only the information for which permission has been granted. It uses state-of-the-market 128-bit encryption security for our transactions. It is DITSCAP certified, having been subjected to and passed thorough security testing and evaluation by independent parties. It meets safeguards specified by the Privacy Act of 1974 in that it maintains a published Department of Defense (DoD) Privacy Impact Assessment and System of Record covering Active Duty Military, Reserve, National Guard, and government civilian employees, to include non-appropriated fund employees and foreign nationals, DoD contractors, and volunteers. DMHRSi is hosted in a secure facility managed by the Defense Information Systems Agency.

For JMIS military and government civilian personnel, most of the required data is received from Service or DoD source systems. However, there may be some additional data entered locally. For contract support personnel, records must be created. So, the first step to implement DMHRSi in JMIS is to collect selected data and have it entered into the application. JMIS will provide templates to ease this initial data gathering process.

Once the initial record is created, there is some data such as local address and phone number that each employee can review and maintain individually. This is accomplished through the DMHRSi Employee Self-Service interface. Therefore, the second step to implement DMHRSi in JMIS is for all personnel to complete two online courses, Introduction to DMHRSi and DMHRSi Employee Self-Service. Training is through the MHS Learning Management System—MHS Learn—accessed at *https://mhslearn.satx.disa.mil.* MHS Learn guidance including login instructions and timelines for completion will be provided separately.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3518 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0170]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Manpower Data Center (DMDC), 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209–2593, or call at 571–372–1102.

Title, Associated Form, and OMB Control Number: Department of Defense National Survey of Employers.

Needs and Uses: The Department of Defense National Survey of Employers is designed to determine ways of supporting employers when Guard and Reserve employees are absent due to military duties, determine general attitudes toward Guard and Reserve employees and their contributions to employers, and examine knowledge of and compliance with Uniformed Services Employment and Reemployment Rights Act.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, local or tribal government.

Annual Burden Hours: 125,000 hours.

Number of Respondents: 250,000.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: One time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Uniformed Services Employment and Reemployment Rights Act (USERRA) requires that persons who serve or have served in the Armed Forces, Reserves, National Guard or other ''uniformed services:'' (1) Are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty; and (3) are not discriminated against in employment based on past, present, or future military service. The Act covers members of the Uniformed Services, any other category of persons designated by the President in time of war or national emergency, and their government and civilian employers. It is the responsibility of the Employer Support of the Guard and Reserve (ESGR) to promote cooperation and understanding between Reserve component members and their civilian employers and to assist in the resolution of conflicts arising from an employee's military commitment. The Department of Defense National Survey of Employers is being conducted on a statistically random basis to determine best practices of ESGR in supporting employers of Reserve and Guard members and to evaluate the effectiveness of ESGR and DoD programs. The information collected is used for overall program evaluation, management and improvement.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3516 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2008–OS–0043]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy/Accession Policy), 4000 Defense Pentagon, Washington, DC 20301–4000 or call at (703) 697–9271.

Title and OMB Control Number: Utility of Test Preparation Guides and Education Programs in Enhancing Recruit Candidate Performance on the Armed Services Vocational Aptitude Battery (ASVAB), OMB Number 0704–0450.

Needs and Uses: The 2007 National Defense Authorization Act (NDAA), section 546, directs the Secretary of Defense to conduct a test of the utility of test preparation guides in enhancing recruit candidate performance on the Armed Services Vocational Aptitude Battery (ASVAB). The ASVAB is a cognitive ability test used to select and classify applicants for enlistment into the U.S. military. This information data collection is needed to meet the following objectives, as stated in the NDAA, to examine: The degree to which test preparation assistance degrades test reliability and accuracy, the degree to which test preparation assistance allows more accurate testing of skill aptitudes and mental capability, and to recommend a role for test preparation assistance in military recruiting.

Affected Public: Individuals or households.

Annual Burden Hours: 33,350.

Number of Respondents: 145,000.

Responses per Respondent: 1 or 2.

Average Burden per Response: 12 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The 2007 National Defense Authorization Act (NDAA), section 546, directs the Secretary of Defense to conduct a test of the utility of test preparation guides in enhancing recruit candidate performance on the Armed Services Vocational Aptitude Battery (ASVAB). The instrument used to collect the information is the ASVAB Preparation Questionnaire, which covers: (a) ASVAB test taking history, (b) ASVAB preparation behaviors, (c) academic history, and (d) language spoken and education level of parents. The potential respondent universe consists of all military applicants who complete the ASVAB when taken at Military Entrance Processing Stations (MEPS) and Military Entrance Testing Sites (METS). The questionnaire will be administered immediately after the applicant completes the ASVAB. Computer administration will be used in the MEPS and paper and pencil in the METS. The information collected will be used for program planning, and to compile the congressionally-mandated report.

Dated: January 12, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3514 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2010–OS–0128]

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Deputy Under Secretary of Defense (Installations and Environment).

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Deputy Under Secretary of Defense (Installations and Environment) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Deputy Under Secretary of Defense (Installations & Environment), 3400 Defense Pentagon, Washington, DC 20301–3400, or call (703) 695–6107.

Title; Associated Form; and OMB Number: Technical Assistance for Public Participation (TAPP) Application, DD Form 2749, OMB Control Number 0704–0392.

Needs and Uses: The collection of information is necessary to identify products or services requested by community members of restoration advisory boards or technical review committees to aid in their participation in the Department of Defense's environmental restoration program, and to meet Congressional reporting requirements.

Affected Public: Not-for-profit institutions.

Annual Burden Hours: 200.

Number of Respondents: 50.

Responses per Respondent: 1.

Average Burden per Response: 4 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are community members of restoration advisory boards or technical review committees requesting technical assistance to interpret scientific and engineering issues regarding the nature of environmental hazards at an installation. This assistance will assist communities in participating in the cleanup process. The information, directed by 10 U.S.C. 2705, will be used to determine the eligibility of the proposed project, begin the procurement process to obtain the requested products or services, and determine the satisfaction of community members of restoration advisory boards and technical review communities receiving the products and services.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3509 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Department of Defense, DoD.

ACTION: Interim final guidance.

SUMMARY: The Department of Defense (DoD) publishes for public comment Interim Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (DoD Recipient LEP Guidance). The DoD Recipient LEP Guidance is based on the prohibition against national origin discrimination in Title VI of the Civil Rights Act of 1964, as affects limited English proficient persons.

DATES: Comments must be received on or before March 16, 2012.

ADDRESSES: Please submit only one set of comments via one of the methods described.

- *Fax:* (703) 571–9338.
- *Mail:* DoD/ODMEO LEP Public Comments, 4000 Defense Pentagon, Room 5D641, Washington, DC 20301–4000.
- *Email: james.love@osd.mil.*

FOR FURTHER INFORMATION CONTACT: James E. Love, (703) 571–9331. Arrangements to receive the policy in an alternative format may be made by contacting the named individual.

SUPPLEMENTARY INFORMATION: Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* (Title VI), and DoD regulations implementing Title VI, recipients of Federal financial assistance from the DoD (''recipients'') have a responsibility to ensure meaningful access by persons with limited English proficiency (LEP) to their programs and activities. See 32 CFR 195.4. Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), directs each Federal agency that extends assistance subject to the requirements of Title VI to publish, after review and approval by the Department of Justice (DOJ), guidance for its recipients clarifying that obligation. The Executive Order also directs that all such guidance be consistent with the compliance standards and framework set forth by DOJ.

On March 14, 2002, the Office of Management and Budget (OMB) issued a Report to Congress titled ''Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency.'' Among other things, the Report recommended the adoption of uniform guidance across all Federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, the DOJ published LEP Guidance for DOJ recipients which was drafted and organized to also function as a model for similar guidance by other Federal grant agencies. See 67 FR 41455 (June 18, 2002). This interim final DoD Guidance is based upon the model of June 18, 2002, DOJ LEP Guidance for Recipients.

The primary focus of this Guidance is on entities that receive Federal financial assistance from DoD, either directly or indirectly, through a grant, cooperative agreement, contract or subcontract, and operate programs or activities or portions of programs or activities in the United States and its territories.

In connection with the issuance of this Guidance, each DoD component is encouraged to review their current programs and activities to determine whether they provide the type of external assistance to a recipient which is subject to Title VI. If Title VI is determined to be applicable to one or more program or activity, the administering component should consider developing a program-specific Appendix to this Guidance. The Appendix should explain how the component's recipients may ensure meaningful linguistic access consistent with the principles and compliance standards set out in DoD's LEP Guidance for Recipients below. The Appendix will be submitted to DOJ for review and approval prior to publication in the **Federal Register**.

It has been determined that the Guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedures Act, 5 U.S.C. 533. It has also been determined that this Guidance is not subject to the requirements of Executive Order 12866.

The text of the complete proposed Guidance document appears below.

Dated: January 18, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or ''LEP.'' The 2000 census indicates that 28.1% of all Spanish-speakers, 28.2% of all speakers of Chinese languages, and 32.3% of all Vietnamese-speakers reported that they spoke English ''not well'' or ''not at all.''

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[1]

This policy Guidance clarifies existing legal requirements for LEP

[1] DoD recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This Guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP population it encounters, and its prior experience in providing language services in the community it serves.

persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[2] These are the same criteria DoD has been and will continue to use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and Title VI regulations against national origin discrimination. The purpose of this policy Guidance is to assist recipients in fulfilling their responsibility to provide meaningful access to LEP persons under existing law.

As with most government initiatives, this policy Guidance requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that federally assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in federally assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive Federal financial assistance.

In addition, many DoD recipients also receive Federal financial assistance from other Federal agencies, such as the Department of Education or the Department of Health and Human Services. While guidance from those Federal agencies is consistent with this Guidance, recipients receiving assistance from multiple agencies should review those agencies' guidance documents at *http://www.lep.gov* for a more focused explanation of how the standards apply in portions of programs or activities that are the focus of funding from those agencies.

There are many productive steps that the Federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, the DoD plans to continue to provide assistance and guidance in this important area. In addition, the DoD plans to work with representatives of research and defense-related institutions, grant organizations, administrative agencies, other Federal entities, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, DoD intends to explore how language assistance measures, resources and cost-containment approaches developed with respect to its own Federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small non-profits. An interagency working group on LEP developed a Web site, *www.lep.gov,* to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall ''on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' Section 602 of Title VI, 42 U.S.C. 2000d–1, authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity ''to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability.''

DoD regulations promulgated pursuant to section 602 forbid recipients from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.'' 32 CFR 195.4(b)(2).

The Supreme Court, in *Lau* v. *Nichols,* 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of DOD, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In *Lau,* a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency,'' 65 FR 50121 (August 16, 2000) was issued on August 11, 2000. Under that Executive Order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from ''restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program'' or from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.''

On that same day, DOJ issued a general guidance document addressed to ''Executive Agency Civil Rights Officers'' setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. ''Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency,'' 65 FR 50123 (August 16, 2000) (''DOJ LEP Guidance'').

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander* v. *Sandoval,* 532 U.S. 275 (2001). On October 26, 2001, the Civil Rights Division of DOJ issued a memorandum clarifying and reaffirming the DOJ LEP Guidance in light of Sandoval.[1] The Assistant Attorney General stated that because Sandoval did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and

[2] This policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This Guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

activities—the Executive Order remains in force. Mindful of the limitations on bringing a private action to enforce Title VI regulations addressing disparate impact, DoD is committed to vigorously enforcing the requirements of Title VI and its implementing regulations on behalf of LEP beneficiaries and other LEP persons encountered by DoD assisted agencies and entities.

This Guidance document is thus published at the direction of Executive Order 13166 and pursuant to Title VI and the Title VI regulations. It is consistent with the relevant DOJ Guidance. 67 FR 41455 (June 18, 2002) (also available at *www.lep.gov*).

III. Who is covered?

All entities that receive Federal financial assistance from the DoD, either directly or indirectly, through a grant, cooperative agreement, contract or subcontract, and operate programs or activities or portions thereof in the United States and its territories, are covered by this Guidance. Title VI applies to all Federal financial assistance, which includes but is not limited to awards and loans of Federal funds, awards or donations of Federal land or property, details of Federal or Federally funded personnel, or any agreement, arrangement or other contract that has as one of its purposes the provision of assistance.

Examples of recipients of DoD assistance covered by this Guidance include, but are not limited to:

— State and local government agencies and any other entities that receive DoD-donated land or land that is sold at a below-market rate; and

— Organizations and institutions, such as nonprofit organizations or educational institutions, receiving grants to conduct scientific, medical, environmental or other research.

Title VI prohibits discrimination in any program or activity that receives Federal financial assistance. In most cases, when a recipient receives Federal financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program that uses the Federal assistance. Thus, all parts of the recipient's operations would be covered by Title VI, even if the Federal assistance were used only by one part.[3] Sub-recipients likewise are covered when Federal funds are passed through from one recipient to a sub-recipient.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

IV. Who is a limited English proficient individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or ''LEP,'' entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by DoD recipients and should be considered when planning language services include, but are not limited to:

—Persons who are included in DoD-funded medical studies;
—Persons who participate in support groups that are funded by DoD;
—Persons who encounter or who are eligible to receive benefits or services from a state or local agency that is a recipient of DoD assistance;
—Persons who encounter or are eligible to participate in portions of programs or activities of an institution of higher learning that receives DoD assistance;
—Persons who are served by programs or activities run by recipients of DoD-donated land;
—Persons who attend community meetings or other public meetings organized by DoD recipients;[4]
—Other LEP persons who encounter or are eligible to receive benefits or services from DoD recipients; and
—Parents and family members of the above.

V. How does a recipient determine the extent of its obligation to provide LEP services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or activity or portion thereof; (2) the frequency with which LEP individuals come in contact with the program or activity or portion thereof; (3) the nature and importance of the program, activity, service, benefit, or information provided by the recipient to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this Guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of encounters. For instance, some portions of a recipient's program or activity will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. DOD recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons ''eligible to be served or likely to be encountered by'' a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant agency as the recipient's service area. However, where, for instance, a regional office of a nonprofit that provides support services for cancer survivors serves a large LEP population, the appropriate service area is most likely

[3] However, if a Federal agency were to decide to terminate Federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d–1.

[4] For additional guidance on providing meaningful access to LEP individuals at public hearings or meetings, *see* Department of Housing and Urban Development Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 FR 70980 (Dec. 19, 2003) (available at *http://www.lep.gov).*

the regional office of the nonprofit organization, and not the entire population served by the non-profit. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. In addition, there may be circumstances in which recipients appropriately identify English language skills as an eligibility criterion, such as in the case of a university English language masters program. But other portions of the program, such as a university daycare or clinic open to the public, or various public community events, cultural exchanges, campus security, or other portions of a recipient's operations, may have a more significant LEP population that may be encountered or is eligible to participate. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the recipient's program or activity.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers.

Other data in addition to prior experiences should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.[5] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. A recipient needs to determine whether denial or delay of access to services or information could have serious, economic, safety, education or even life-threatening implications for the LEP individual. For instance, the obligations of a federally assisted entity providing medical advice or services differ from those of a federally assisted program providing purely recreational activities (however, if a language barrier could result in denial or delay of access to important benefits, services, or information, or have a serious implication for a LEP person who participates in the recreational activity, the legal obligation to provide language services in that circumstance would be higher). Decisions by a Federal, state, or local entity to make an activity compulsory or required in order to maintain or receive an important benefit or service or preserve a right, such as access to medical care, appeals procedures, or compliance with rules and responsibilities, can serve as strong evidence of the program's importance.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, ''reasonable steps'' may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be ''fixed'' later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.[6]

Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be

[5] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

[6] Small recipients with limited resources may find that entering into a telephonic interpretation service contract will prove cost effective.

able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the ''mix'' of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter ''interpretation'') and written translation (hereinafter ''translation''). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a job training center that was created three years ago after DoD donated land from a former military base serves a large Hispanic population. The job training center may need immediate oral interpreters to be available and should give serious consideration to hiring some bilingual staff if they have not done so already. By contrast, the center may be able to rely on a telephonic interpretation service to assist those LEP individuals who speak a language that is not commonly encountered by the center. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Academic institutions, nonprofit organizations, and other recipients of DoD funds have a long history of interacting with people with varying language backgrounds and capabilities. In fact, many DoD recipients choose not only to provide interpretation and translation services, but also to provide English-language training for LEP individuals. This approach is consistent with the purpose of Executive Order 13166. DoD's goal is to continue to encourage these efforts and to encourage the sharing of such promising practices among recipients, as well as to ensure meaningful linguistic access for LEP individuals.

Recipients have two main ways to provide language services: oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

—When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

—Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

—Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.,* consecutive, simultaneous, summarization, or sight translation);

—Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person;[7] and understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires;

—Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles, particularly in a formal context such as a hearing.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services provided during the medical screening of a LEP individual must be extraordinarily high, while the quality and accuracy of language services provided at a university's social program need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for ''timely'' applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of DOD recipients providing health, economic, educational, and safety services on DOD-donated land, a recipient would likely not be providing meaningful access if it had one bilingual staffer available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best and often most economical, options. Recipients can, for example, fill public contact positions, such as receptionists, guards, or social workers, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If

[7] Many languages have ''regionalisms,'' or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages which do not have an appropriate direct interpretation of some terms, the interpreter or translator should be so aware and be able to provide the most appropriate interpretation. The interpreter should make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter. Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where appropriate or necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

Use of Family and Friends and Informal Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, friend, or other person) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children), friends, or other informal interpreters are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For DoD recipient programs and activities, this is particularly true in situations in which health, safety, economic livelihood, or access to important benefits and services are at stake, or when mistakes in interpretation or translation could have other serious consequences to the LEP person.

While issues of competency, confidentiality, and conflict of interest in the use of family members, friends, or other informal interpreters often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary educational tour of a DoD facility offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high, and the number or proportion and frequency of LEP encounters may be quite low. In such a setting, an LEP person's use of family, friends, or others to interpret may be appropriate. However, children should not be used as interpreters.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Such written materials could include, for example:

——Consent, application, and complaint forms;

——Intake forms with the potential for important consequences;

——Written notices of rights, denial, loss, or decreases in benefits or services, and other hearings;

——Notices advising LEP persons of free language assistance;

——Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required;

——Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document (or the information it solicits) is ''vital'' may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, a flyer announcing a soccer program run by a city agency at a former military base that was donated to that agency would not generally be considered vital, whereas written information about the application process for new affordable housing provided by the agency at that same base should likely be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are ''vital'' to the meaningful access of the LEP populations they serve.

Categorizing a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of ''meaningful access.'' Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, and religious and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages and/or the language of the recipient is not known. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic, for although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking could incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) below outline the circumstances that can provide a ''safe harbor'' for recipients regarding the requirements for translation of written materials. A ''safe harbor'' means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

When determining whether to provide translated documents or oral language services, recipients should consider the literacy rates of the LEP communities they serve. For example, certain languages (*e.g.,* Hmong) until recently have been oral and not written, thus a high percentage of such LEP speakers may be unable to read translated documents or written instructions. Data analysis, utilizing information from a range of community groups and other sources, may provide a recipient with insight into whether translation of vital documents meets the goal of providing meaningful access, or whether it makes

more sense to focus those resources on oral, and, where appropriate, graphics- or visually-based information exchange.

Safe Harbor. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The DoD recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. For example, even when there is only one LEP individual who is participating in a medical study, vital information should be provided orally in a language that person understands, even if it is not translated in writing.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.[8] Competence can often be ensured by having a second, independent translator ''check'' the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ''back translation.''

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning. Community organizations may be able to help consider whether a document is written at an appropriate level for the audience. Also, there may be languages which do not have an appropriate direct translation of some terms. The translator should make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs. Creating or using already-created glossaries of commonly-used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may call for translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (including, *e.g.,* information or documents of DoD recipients regarding certain health, economic, education, and safety services). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons (''LEP plan'') for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain DoD recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or ''I speak cards''), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say ''I speak Spanish'' in both Spanish and English, ''I speak Vietnamese'' in both English and Vietnamese, etc. To reduce costs of compliance, the Federal government has made a set of these cards available on the Internet. The Census Bureau ''I speak card'' can be found and

[8] For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

downloaded at *http://www.usdoj.gov/crt/cor/13166.htm* and *www.lep.gov.* When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

—Types of language services available.

—How staff can obtain those services.

—How to respond to LEP callers.

—How to respond to written communications from LEP persons.

—How to respond to LEP individuals who have in-person contact with recipient staff.

—How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

—Staff know about LEP policies and procedures.

—Staff having contact with the public (or those in a recipient's custody) are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions (or having contact with those in a recipient's custody) are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to certain health, educational, safety, or economic services or activities run by DOD recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.[9]

—Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be ''tagged'' onto the front of common documents.

—Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.

—Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.

—Including notices in local newspapers in languages other than English.

—Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.

—Presentations and/or notices at schools and religious organizations.

[9] The Social Security Administration has made such signs available at *http://www.ssa.gov/multilanguage/langlist1.htm.* These signs could, for example, be modified for recipient use.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

—Current LEP populations in service area or population affected or encountered.

—Frequency of encounters with LEP language groups.

—Nature and importance of activities to LEP persons.

—Availability of resources, including technological advances and sources of additional resources, and the costs imposed.

—Whether existing assistance is meeting the needs of LEP persons.

—Whether staff knows and understands the LEP plan and how to implement it.

—Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by DoD through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that DoD will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, DoD will inform the recipient in writing of this determination, including the basis

for the determination. The DoD uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, DoD must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DoD must secure compliance through the termination of Federal assistance after the DoD recipient has been given an opportunity for an administrative hearing and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings. The DoD engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, DoD proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, the DoD's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, DoD acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, DoD will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, DoD recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, education, economic status, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

[FR Doc. 2012–3523 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Publication of Housing Price Inflation Adjustment Under 50 U.S.C. App. § 531

AGENCY: Office of the Under Secretary for Personnel and Readiness, DoD.

ACTION: Notice.

SUMMARY: The Servicemembers Civil Relief Act, as codified at 50 U.S.C. App. § 531, prohibits a landlord from evicting a Service member (or the Service member's family) from a residence during a period of military service except by court order. The law as originally passed by Congress applied to dwellings with monthly rents of $2400 or less. The law requires the Department of Defense to adjust this amount annually to reflect inflation and to publish the new amount in the **Federal Register**. We have applied the inflation index required by the statute. The maximum monthly rental amount for 50 U.S.C. App. § 531 (a)(1)(A)(ii) as of January 1, 2012, will be $3,047.45.

DATES: *Effective Date:* January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Major Shawn McKelvy, Office of the Under Secretary of Defense for Personnel and Readiness, (703) 697–3387.

Patricia Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3524 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Termination of the Department of Defense Web-Based TRICARE Assistance Program Demonstration

AGENCY: Department of Defense, DoD.

ACTION: Notice of demonstration termination.

SUMMARY: This notice is to advise interested parties of the termination of the Military Health System (MHS) demonstration project, under authority of Title 10, U.S. Code, Section 1092, entitled Web-Based TRICARE Assistance Program (TRIAP). The demonstration project uses existing health care support contracts (HCSC) to allow web-based behavioral health and related services including non-medical counseling and advice services to active duty service members (ADSM), their families and members and their dependents enrolled in TRICARE Reserve Select, and those eligible for the Transition Assistance Management Program (TAMP) who reside in the continental United States.

DATES: The demonstration will terminate on March 31, 2012.

ADDRESSES: TRICARE Management Activity (TMA), Health Plan Operations, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: For questions pertaining to this demonstration project, please contact Mr. Richard Hart at (703) 681–0047.

SUPPLEMENTARY INFORMATION: This demonstration was effective August 1, 2009, as referenced in the original **Federal Register** Notice, 74 FR 36676, July 24, 2009. The demonstration was extended to March 31, 2011, as referenced by **Federal Register** Notice, 75 FR 15693, March 30, 2010 and again extended to March 31, 2012 as referenced by **Federal Register** Notice, 76 FR 12073, March 4, 2011. The demonstration provides capability for short-term, problem solving counseling between eligible beneficiaries and licensed counselors utilizing video technology and software such as Skype or iChat. TRIAP services are available 24/7 and ADSMs, their spouses of any age, and other family members 18 years of age or older who reside in the United States are eligible to participate. Enrollees in TRICARE Reserve Select and the Transitional Assistance Management Program may also use the program. TRIAP is based on commercial employee assistance models and provides counseling in a virtual face-to-face environment. There is no diagnosis made, there are no limits to usage, and no notification about those seeking counseling are made to their primary care managers or others, unless required by the counselor's licensure (e.g., spouse abuse). Participant confidentiality is protected, as no medical record entry is made.

Monthly measures of Web-based behavioral health care access were collected and analyzed from each TRICARE region with the intent to inform Department leaders whether this type of program is a valid mechanism to improve access. Only 5109 calls were recorded in the two-year period from

August 2009 through August 2011, with the majority (89%) occurring in the West region. Of these calls, 1888 calls were listed as either ''initial'' or ''intake'' with 3098 listed as ''follow-up,'' and 123 calls were not coded for contact type. Thirty-five percent (35%) of callers reported themselves as the sponsor, 62% reported as a dependent, and 3% did not report relationship. These results indicate the demonstration has not been utilized to the extent anticipated. At a cost of approximately $3 million annually across all three TRICARE regions, the demonstration's goal of improving beneficiary access to behavioral health care by incorporating Web-based video technology has not been realized and thus not viable from a financial perspective.

The termination of TRIAP in March 2012 will not cause a void in the availability of non-medical counseling services for Service members and their families. Military OneSource (MOS) offers a robust and popular Employee Assistance Program model of non-medical counseling service to provide Service members and their families in both the continental United States and overseas with an avenue for private, non-reportable discussion of personal life issues. Issues such as family difficulties and pressures, crisis intervention, anxiety, self-esteem, loneliness, and critical life decisions can be discussed on a one-to-one basis in the context of a confidential relationship with a professional counselor. Telephonic or face-to-face counseling is available 24/7 by contacting the MOS 1–800 call center who maintains a National Network of trained, experienced, and credentialed counselors. In addition, MOS is currently pursuing integration of video technology and software capability such as Skype or iChat to their non-medical counseling service by early 2012. By terminating the TRIAP Demonstration and integrating video technology into the MOS non-medical counseling service, the Department is responsibly managing costs, streamlining and eliminating duplication of services, and making it easier for Service members and their families to find assistance through one convenient toll free number.

The TRICARE Management Activity will work with MOS to develop a communication plan and ensure a seamless transition of Web-based video counseling from TRICARE to MOS.

Dated: February 9, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3525 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket No. USAF–2008–0006]

Proposed Collection; Comment Request

AGENCY: HQ USAFA/RR, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, HQ USAFA/RR announces the a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to: HQ USAFA/RR, 2304 Cadet Drive, Suite 2400, USAF Academy, CO 80840 or call (719) 333–8850.

Title; Associated Form; and OMB Number: Nomination For Appointment To The United States Military Academy, Naval Academy or Air Force Academy; DD FORM 1870; OMB Control Number 0701–0026.

Needs and Uses: DD FM 1870 is used to implement the provisions of Title X, U.S.C. 4342, 6953 and 32 CFR part 901. Members of Congress, the Vice President and Delegates to Congress and Resident Commissioner of Puerto Rico use this form to nominate constituents to the three DoD Academies, West Point, Annapolis and Air Force. Data required is supplied by the prospective nominees to Members of Congress. Eligibility requirements are outlined in AFI 36–2019, Appointment to the United States Air Force Academy.

Affected Public: Applicants to DoD Military Academies.

Annual Burden Hours: 2,600.

Number of Respondents: 5,200.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Department of Defense Form 1870, Nomination for Appointment to the United States Military Academy, Naval Academy and Air Force Academy, is used solely by legal nominating authorities who by Federal law are entitled to make appointments to the three service military academies. The nomination form allows for nominating authorities to select by checking one box as to which academy is being provided with the name of a nomination to be processed. Eligibility information concerning the nominees is information that is also included on the form. The nominating authority identifies himself/herself and must date and sign the form to make it a legally acceptable form. The form includes the three addresses of the service academies in order that the form may be submitted to the proper academy. The form is currently used, full time, by only the United States Military Academy. The United States Air Force Academy uses the form only in rare cases totally no more that 100 forms each year. The United States Naval Academy does not use the form. The reason for this is the United States Naval Academy and the United States Air Force Academy now employ an on-line nomination submissions program in lieu of the DD

Form 1870. We expect the United States Military Academy will employ the on-line nomination submissions program beginning in the Fall of CY 2008.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3498 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2010–0022]

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Air Force announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Air Force Institute of Technology, 2950 Hobson Way, WPAFB, OH, 45433, or call 937–255–3636 x4674.

Title; Associated Form; and OMB Number: Leading Edge Supply Chain Survey; OMB Number 0701–TBD.

Needs and Uses: This study seeks to uncover the emerging trends in supply chain management (SCM) practices, processes and metrics that could be beneficial to the Department of Defense, with particular emphasis on the U.S. Air Force.

Affected Public: Business or other for profit.

Annual Burden Hours: 613.5.

Number of Respondents: 818.

Responses per Respondent: 1.

Average Burden per Response: 45 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Potential respondents to this survey are individuals with in depth experience in commercial supply chain management.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3503 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket No. USAF–2007–0024]

Proposed Collection; Comment Request

AGENCY: Office of Admissions, HQ United States Air Force Academy, Department of the Air Force, Department of Defense.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Admissions, HQ United States Air Force Academy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regualtions.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to The Office of Admissions, 2304 Cadet Drive, Suite 2400, USAF Academy, CO 80840,or telephone (719) 333–7291.

Title, Associated Form; and OMB Number: United States Air Force Academy School Official's Evaluation of Candidate, United States Air Force Academy Form 145, OMB Control Number 0701–0152.

Needs and Uses: The Information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 4100.

Number of Respondents: 4100.

Responses per Respondent: 1.

Average Burden per Response: 60 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The

respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3502 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2010–0024]

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3502(c)(2)(A) of the Paperwork Reduction Act of 1995, the Associate Director for Civil Aviation, Directorate of Operations and Training, Deputy Chief of Staff for Air and Space Operations, announces the a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) The accuracy of the agency's estimate of the burden of the proposed information collection; (b) ways to enhance the quality, utility, and clarity of the information to be collected; and (c) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 2250–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the HQ USAF/XOO–CA, 1480 Air Force Pentagon, Washington, DC 20330–1480, or call (703) 697–1796.

Title, Associated Form, and OMB Number: Civil Aircraft Certificate of Insurance, DD Form 2400; Civil Aircraft Landing Permit, DD Form 2401; Civil Aircraft Hold Harmless Agreement, DD Form 2402; OMB Control Number 0701–0050.

Needs and Uses: The collection of information is necessary to ensure that the security and operational integrity of military airfields are maintained; to identify the aircraft operator and the aircraft to be operated; to avoid competition with the private sector by establishing the purpose for use of military airfields; and to ensure the U.S. Government is not held liable if the civil aircraft becomes involved in an accident or incident while using military airfields, facilities, and services.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Annual Burden Hours: 1,800.

Number of Respondents: 3,600.

Responses per Respondent: 1.

Average Burden for Respondents: 30 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The collection of information is necessary to ensure that the security and operational integrity of military airfields are maintained; to identify the aircraft operator and the aircraft to be operated; to avoid competition with the private sector by establishing the purpose for use of military airfields; and to ensure the U.S. Government is not held liable if the civil aircraft becomes involved in an accident or incident while using military airfields, facilities, and services.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3499 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2008–0010]

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the United States Air Force Academy, Office of Admissions, announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to United States Air Force Academy, Office of Admissions, 2304 Cadet Drive, Suite 236, USAFA, CO 80840, or call United States Air Force

Academy, Office of Admissions (719) 333–7291.

Title, Associated Form, and OMB Number: Air Force Academy Applications, United States Air Force Academy Form 149, OMB Number 0701–0087.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 4,925.

Number of Respondents: 9,850.

Responses per Respondent: 1.

Average Burden per Response: 30 Minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the Information on this form is not collected the individual cannot be considered for admittance to the Air Force Academy.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3500 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2009–0051]

Proposed Collection; Comment Request

AGENCY: Office of Admissions, Headquarters United States Air Force Academy, Department of the Air Force, Department of Defense.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Admissions, Headquarters United States Air Force Academy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of Admissions, 2304 Cadet Drive, Suite 236, USAF Academy, CO 80840, or telephone 719–333–7291.

Title; Associated Form; and OMB Number: United States Air Force Academy Writing Sample; United States Air Force Academy Form 0–878; OMB Number 0701–0147.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals and households.

Annual Burden Hours: 4100.

Number of Respondents: 4100.

Responses per Respondent: 1.

Average Burden per Response: 1 hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3501 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2009–0022]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA–RPA), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public

viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Director of Admissions, U.S. Military Academy, Official Mail & Distribution Center, ATTN: (Sue Hennen), 646 Swift Road, West Point, NY 10996–1905, or call Department of the Army Reports clearance officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Candidate Procedures, USMA Forms 21–16, 21–23, 21–25, 21–26, 5–520, 5–518, 5–497, 481, 546, 5–2, 5–26, 5–515, 480–1, 520, 261, 21–14, 21–8; OMB Control Number 0702–0061.

Needs and Uses: West Point candidates provide personal background information that allows the West Point Admissions Committee to make subjective judgments on non-academic experiences. Data are also used by West Point's Office of Institutional Research for correlation with success in graduation and military careers.

Affected Public: Individuals or households.

Annual Burden Hours: 11,720.

Number of Respondents: 46,880.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Title 10, U.S.C. 4346 provides requirements for admission of candidates to the U.S. Military Academy. The U.S. Military Academy (USMA) strives to motivate outstanding potential candidates to apply for admission to USMA. Once candidates are found, USMA collects information necessary to nurture them through successful completion of the application process.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3505 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2008–0006]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army (OAA–AAHS), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Surface Deployment and Distribution Command, G5, 709 Ward Drive, Building 1990, Attn: (Jerome Colton) Scott Air Force Base, Illinois 62225, or call Department of the Army Reports clearance officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Industry Partnership Survey; OMB Control Number 0702–0122.

Needs and Uses: The information collected from this survey will be used to systematically survey and measure industry contractors to better understand how they feel about SDDC's acquisition processes, and to improve the way business is conducted. The SDDC provides global surface deployment command and control and distribution operations to meet National Security objectives in peace and war. They are working to be the Warfighter's single surface deployment/distribution provider for adaptive and flexible solutions delivering capability and sustainment on time. Respondents will be commercial firms who have contracts awarded by SDDC for several program areas.

Affected Public: Business or other for-profit.

Annual Burden Hours: 343.

Number of Respondents: 1,371.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: Other (14-month cycle).

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The SDDC will use the survey information to improve the efficiency, quality, and timeliness of its processes, as well as to strengthen its partnership with industry. The SDDC goal is to promote this survey effort as a useful self-assessment, self-improvement, and benchmarking tool, while ensuring that data reliability is maintained.

Dated: January 12, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3506 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2009–0021]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA–AHS), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received, without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Director of Admissions, U.S. Military Academy, Official Mail & Distribution Center, ATTN: (Sue Hennen), 646 Swift Road, West Point, NY 10996–1905, or call Department of the Army Reports clearance officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Pre-Candidate Procedures, USMA–375, USMA–723, USMA–450, USMA–21–12, USMA–21–27, USMA–381; OMB Control Number 0702–0060.

Needs and Uses: West Point candidates provide personal background information which allows the West Point Admissions Committee to make subjective judgments on non-academic experiences. Data are also used by West Point's Office of Institutional Research for correlation with success in graduation and military careers.

Affected Public: Individuals or households.

Annual Burden Hours: 9.930.

Number of Respondents: 66,200.

Responses per Respondent: 1.

Average Burden per Response: 9 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Title 10, U.S.C. 4336 provides requirements for admission of candidates to the U.S. Military Academy. The U.S. Military Academy (USMA) strives to motivate outstanding potential candidates to apply for admission to USMA. Once candidates are found, USMA collects information necessary to nurture them through successful completion of the application process.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3504 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Acquisition of Items for Which Federal Prison Industries Has a Significant Market Share

AGENCY: Department of Defense (DoD).

ACTION: Notice; correction.

SUMMARY: This document corrects the effective date for the notice published in the **Federal Register** on February 8, 2012, regarding the notification that provided an up-to-date list of product categories for which the Federal Prison Industries' share of the DoD market is greater than five percent.

DATES: *Effective Date:* February 12, 2012.

FOR FURTHER INFORMATION CONTACT: Director, Defense and Acquisition Policy, Attn: Susan Pollack, 3060 Defense Pentagon, Washington, DC 20301–3060; telephone 703–697–8336.

Correction

In the notice published February 8, 2012, at 77 FR 6549, make the following correction to ''**DATES:** *Effective Date:* February 8, 2012'' by correcting the effective to read:

''**DATES:** *Effective Date:* February 12, 2012.''

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2012–3530 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2010–0034]

Proposed Collection; Comment request

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3502(c)(2)(A) of the Paperwork Reduction Act of 1995, the Chief of Naval Education and Training announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request additional information or to

obtain a copy of the proposal and associated collection instruments, write to Chief of Naval Education and Training (N79A21), 250 Dallas Street, Pensacola, FL 32508–5220, or call at (850) 452–9387.

Title; Associated Form; and OMB Number: Application Forms Booklet, Naval Reserve Officers Training Corps (NROTC) Scholarship Program; OMB Control Number 0703–0026.

Needs and Uses: This collection of information is used to make a determination of an applicant's academic and/or leadership potential and eligibility for an NROTC scholarship. The information collected is used to select the best-qualified candidates.

Affected Public: Individuals or households.

Annual Burden Hours: 56,000.

Number of Respondents: 14,000.

Responses per Respondent: 1.

Average Burden per Response: 4 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This collection of information is used to make a determination of an applicant's academic and/or leadership potential and eligibility for an NROTC scholarship. The information collected is used to select the best-qualified candidates.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3507 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2010–0013]

Notice of Proposed Information Collection; Comment request

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Navy Recruiting Command announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 26, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, write to Commander, Navy Recruiting Command (00SD), 5722 Integrity Drive, Millington, TN 38054–5057, or call at (901) 874–9045.

Title, Form Number, and OMB Number: Application Processing and Summary Record; NAVCRUIT Form 1131/238 replacing the Application for Commission in the U.S. Navy/U.S. Navy Reserve; OMB Control Number 0703–0029.

Needs and Uses: All persons interested in entering the U.S. Navy or U.S. Navy Reserve, in a commissioned status must provide various personal data in order for a Selection Board to determine their qualifications for naval service and for specific fields of endeavor which the applicant intends to pursue. This information is used to recruit and select applicants who are qualified for commission in the U.S. Navy or U.S. Navy Reserve.

Affected Public: Individuals or households.

Annual Burden Hours: 24,000.

Number of Respondents: 12,000.

Responses per Respondent: 1.

Average Burden per Response: 2 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This new form replaces the Application for Commission in the U.S. Navy/U.S. Navy Reserve, and collects less information than the current form requires. The reason for implementing this new form is that even though most of the information is already gathered by the Standard Form 86, Questionnaire for National Security Positions, OMB Control Number 3206–0005, and is already in the system there are still several bits of information needed for the boards to base their selection decisions on.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3508 Filed 2–14–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before March 16, 2012.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is

necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: February 9, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title of Collection: Integrated Evaluation of American Recovery and Reinvestment Act (ARRA) Funding, Implementation and Outcomes.

OMB Control Number: 1850–0877.

Total Estimated Number of Annual Responses: 5,551.

Total Estimated Annual Burden Hours: 5,039.

Abstract: On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA) into law (Pub. L. 111–50). ARRA supports investments in innovative strategies that are intended to lead to improved results for students, long-term gains in school and local education agency capacity for success, and increased productivity and effectiveness.

This evaluation will focus on answering three sets of policy/research questions:

- To what extent did ARRA funds go to the intended recipients?
- Is ARRA associated with the implementation of the key reform strategies it promoted?
- What implementation supports and challenges are associated with ARRA?

The integrated evaluation will draw on existing data, including U.S. Department of Education (ED) data collections, ED ARRA program files, ARRA required reporting, and databases of achievement and other outcomes. The evaluation will also collect new information through surveys of (1) the 50 states and the District of Columbia, (2) a nationally representative sample of school districts, and (3) a nationally representative sample of schools within the sampled school districts. Surveys were conducted in spring 2011 and are planned for spring 2012.

A report will be prepared to describe the distribution of funding. A report and state tabulations will be prepared after each annual survey. The first report, based on the 2011 surveys, will focus on early ARRA implementation and strategies. The second report, based on the 2012 surveys, will expand upon strategies implemented under ARRA.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04754. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2012–3446 Filed 2–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before March 16, 2012.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: February 9, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: Application Package for the Rural Education Achievement Program (REAP) Small, Rural School Achievement Program.

OMB Control Number: 1810–0646.

Total Estimated Number of Annual Responses: 5,052.

Total Estimated Annual Burden Hours: 3,377.

Abstract: This data collection is pursuant to the Secretary's authority under Part B of Title VI of the Elementary and Secondary Education Act (ESEA), to award funds under two grant programs designed to address the unique needs of rural school districts—the Small, Rural School Achievement Program (SRSA) (ESEA Section 6212) and the Rural and Low-Income School Program (ESEA Section 6221). Under the Small, Rural School Achievement Program, the Secretary awards grants directly to eligible local educational agencies (LEAs) on a formula basis. Under the Rural and Low-income School (RLIS) Program, eligible school districts are sub-recipients of funds the

Department awards to State educational agencies (SEAs) on a formula basis. For both grant programs, the Department awards funds by determining the eligibility of individual school districts and calculating the allocation each eligible district receives according to formula prescribed in the statute.

This data collection consists of two primary forms and supporting documents that are used to accomplish the grant award process each year: (1) A spreadsheet used by SEAs to submit information to identify RLIS and SRSA-eligible LEAs and to allocate funds based on the appropriate formula, and (2) an application form for SRSA-eligible LEAs to apply for funding.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04756. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2012–3450 Filed 2–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before April 16, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 9, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title of Collection: Consolidated State Performance Report (Part I and Part II).

OMB Control Number: 1810–0614.

Total Estimated Number of Annual Responses: 14,653.

Total Estimated Number of Annual Burden Hours: 11,838.

Abstract: The Consolidated State Performance Report is the required annual reporting tool for each State, Bureau of Indian Education, District of Columbia, and Puerto Rico as authorized under Section 9303 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04804. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2012–3458 Filed 2–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before March 16, 2012.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of

1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: February 10, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title of Collection: 21st Century Community Learning Centers: Lessons Learned Guides.

OMB Control Number: Pending.

Total Estimated Number of Annual Responses: 960.

Total Estimated Annual Burden Hours: 780.

Abstract: The purpose of this study is to produce guides for the 21st Century Community Learning Centers (21st CCLC) program that will assist the U.S. Department of Education (ED) staff in providing technical assistance to grantees on the following four topics: (1) Science, Technology, Engineering, and Math; (2) English Learners; (3) Career and Technical Education; and (4) structures to increase learning time. ED will identify 21st CCLC subgrantees that are implementing activities in a manner that builds on scientific evidence, strong management and organizational practice, and data use; conduct visits to individual sites operated by those programs to investigate and document the practices; and write a ''lessons from the field'' guide for practitioners that includes site descriptions and cross-site analyses of good and innovative practice that can help other 21st CCLC grantees and subgrantees implement similar programs.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04763. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2012–3580 Filed 2–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995 (Pub. L.104–13).

DATES: Interested persons are invited to submit comments on or before April 16, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 10, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title of Collection: Evaluation of 21st Century Community Learning Centers (21st CCLC) State Competitions.

OMB Control Number: 1875–New.

Total Estimated Number of Annual Responses: 153.

Total Estimated Number of Annual Burden Hours: 153 .

Abstract: This study will examine state subgrant competitions conducted under the 21st CCLC program in order to glean ''lessons learned'' that can inform efforts to improve the state capacity for conducting state competitions for similarly-structured grant programs under the Elementary and Secondary Education Act. More specifically, the study will examine how states conduct their 21st CCLC competitions; state-level conditions and capacity issues affecting the conduct of such competitions; how states evaluate of the quality of local applications and plans; and potential strategies for improvement. Evaluation findings will

support Federal- and state-level staff in developing a deeper understanding of the capacity of states to carry out subgrant competitions, highlight factors that are important to consider in administering a state grant competition, and assist states in developing high-quality grant programs that meet the community needs. Additionally, the results from this review will inform the Department's technical assistance and monitoring activities.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04807. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2012–3578 Filed 2–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before April 16, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 9, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: State Educational Agency, Local Educational Agency, and School Data Collection and Reporting under the Elementary and Secondary Education Act of 1965, Title I, Part A.

OMB Control Number: 1810–0581.

Total Estimated Number of Annual Responses: 50,719.

Total Estimated Number of Annual Burden Hours: 4,712,193.

Abstract: Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act, and its regulations contain several existing provisions that require State educational agencies (SEAs), local educational agencies (LEAs), and schools to collect and disseminate information. The Paperwork Reduction Act covers these activities, which are currently approved by the Office of Management and Budget under control number 1810–0581 (expires April 30, 2012).

The U.S. Department of Education (ED) has invited each SEA to request flexibility on behalf of itself, its LEAs, and schools, in order to better focus on improving student academic achievement and increasing the quality of instruction (ESEA flexibility). As of January 31, 2012, 40 SEAs have indicated that they plan to request ESEA flexibility. Of particular relevance to this collection is ED's expectation that, overall, ESEA flexibility will result in less burden on SEAs, LEAs, and schools compared with current law absent this flexibility. The burden estimate for this collection is therefore substantially lower than that of the currently approved collection.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04800. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2012–3451 Filed 2–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Application for New Awards; Advanced Placement (AP) Test Fee Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

Overview Information: Advanced Placement Test Fee Program.

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.330B.

Dates: Applications Available: February 15, 2012.

Deadline for Transmittal of Applications: April 6, 2012.

Deadline for Intergovernmental Review: June 5, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The AP Test Fee program awards grants to eligible State educational agencies (SEAs) to enable them to pay all or a portion of advanced placement test fees on behalf of eligible low-income students who (1) are enrolled in an advanced placement course and (2) plan to take an advanced placement exam. The program is designed to increase the number of low-income students who take advanced placement tests and receive scores for which college academic credit is awarded.

Program Authority: 20 U.S.C. 6534.

Applicable Regulations: The Education Department General Administration Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: For Fiscal Year 2012, the appropriation for the Advanced Placement Test Fee and Advanced Placement Incentive programs is $26,948,970. Of this amount, the Secretary expects to award $19,962,200 in grants under the Advanced Placement Test Fee program. Under Section 1703 of the Elementary and Secondary Education Act (ESEA), the Secretary gives priority to funding activities under the Advanced Placement Test Fee program and distributes any remaining funds in grants under the Advanced Placement Incentive program.

Estimated Range of Awards: $5,220–$7,231,445.

Estimated Average Size of Awards: $464,237.

Estimated Number of Awards: 43.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs in any State, including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau (subject to continued eligibility).

Note: For the purposes of this program, the Bureau of Indian Education in the U.S. Department of the Interior is treated as an SEA.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Section 1706 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), requires that grant funds provided under the AP Test Fee program supplement, and not supplant, other non-Federal funds that are available to assist low-income individuals in paying for the cost of advanced placement test fees.

3. *Other:* Current grantees under this program that expect to have sufficient carryover funds to cover school year 2011–2012 advanced placement exam fees for eligible low-income students should not apply for a new award under this program.

IV. Application and Submission Information

1. *Address To Request Application Package:* To obtain an application package via the Internet use the following address: *www.ed.gov/programs/apfee/applicant.html.*

To obtain an application package from the U.S. Department of Education use the following address: Francisco Ramirez, U.S. Department of Education, 400 Maryland Avenue SW., room 3E224, Washington, DC 20202–6200. Telephone: (202) 260–1541 or by email: *francisco.ramirez@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:*

Applications Available: February 15, 2012.

Deadline for Transmittal of Applications: April 6, 2012.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 5, 2012.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security

Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the AP Test Fee program, CFDA number 84.330B, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the AP Test Fee program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.330, not 84.330B).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (a Department-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Francisco Ramirez, U.S. Department of Education, 400 Maryland Avenue SW., room 3E224, Washington, DC 20202–6200. Fax: (202) 260–8969.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.330B), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.330B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Review and Selection Process:* The Department intends to fund, at some level, all applications that meet the requirements for Approval of Application as described in the application package for this program and that demonstrate need for new or additional funds to pay advanced placement exam fees on behalf of low-income students for school year 2011–2012.

For FY 2012, the Department expects to award $19,962,200 in new grants under this program. Based on the anticipated number of applicants and other information available to the Department, we expect this amount to be sufficient to pay up to $38 per advanced placement exam for up to three exams per student.

Also, in determining whether to approve an application for a new award (including the amount of the award) from an applicant with a current grant under this program, the Department will consider the amount of any carryover funds under the existing grant and the applicant's use of funds under previous AP Test Fee grant awards.

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

2. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify

administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 and section 1704(f) of the ESEA should you receive funding under the competition. The reporting requirements in 2 CFR part 170 do not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed five performance measures to evaluate the overall effectiveness of the AP Test Fee program: (1) The number of advanced placement tests taken by low-income public school students nationally; (2) The number of advanced placement tests taken by minority (Hispanic, Black, Native American) public school students nationally; (3) The percentage of advanced placement tests passed (for AP exams, scores of 3–5) by low-income public school students nationally; (4) The number of advanced placement tests passed (for AP exams, scores of 3–5) by low-income public school students nationally; and (5) The cost per passage of an advanced placement test taken by a low-income public school student. The information provided by grantees in their final performance reports will be one of the sources of data for the measures. Other sources of data include the College Board, IB Americas, and University of Cambridge International Examinations.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Francisco Ramirez, U.S. Department of Education, 400 Maryland Avenue SW., room 3E224, Washington, DC 20202–6200. Telephone: (202) 260–1541 or by email: *francisco.ramirez@ed.gov*.

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 10, 2012.

Michael Yudin,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–3560 Filed 2–14–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Proposed Agency Information Collection

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information for a National Evaluation of the Energy Efficiency and Conservation Block Grant Program (EECBG) that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Information about the outcomes of the program, including energy and cost savings, the net number of jobs created or retained, and gross reductions in carbon emissions, is needed for a comprehensive evaluation of the program.

DATES: Comments regarding this proposed information collection must be received on or before April 16, 2012. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Colleen Rizy, Environmental Sciences Division, Oak Ridge National Laboratory, P.O. Box 2008, MS–6036, Oak Ridge, TN 37831–6036; *rizycg@ornl.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to: Colleen Rizy, Environmental Sciences Division, Oak Ridge National Laboratory, P.O. Box 2008, MS–6036, Oak Ridge, TN 37831–6036; *rizycg@ornl.gov*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.* New.

(2) *Information Collection Request Title:* National Evaluation of the United States Department of Energy's Energy Efficiency and Conservation Block Grant Program.

(3) *Type of Request:* New.

(4) *Purpose:* DOE is conducting an evaluation of EECBG, a national program providing over $2.7 billion in grants to approximately 2,350 cities, counties, States, territories, and Indian Tribes. Grants could be used for energy efficiency and conservation efforts, building code support, renewable energy installations, distributed energy technologies, transportation activities, recycling and waste management efforts, and other activities approved by DOE.

The EECBG Program, authorized in Title V, Subtitle E of the Energy Independence and Security Act (EISA)

and signed into law on December 19, 2007, was funded, for the first time, by the American Recovery and Reinvestment Act of 2009. The Funding Opportunity Announcement (FOA) for Formula Grants was issued on June 25, 2009 and closed on June 25, 2010.

The scope of the National Evaluation of EECBG involves a combination of careful reviews of grant status reports and applications (''engineering desk reviews''), conversations with DOE project officers, and in-depth interviews with grant managers to assemble critical data for answering the three questions of interest:

1. What is the total magnitude of energy and cost savings, and other key outcomes, such as gross carbon emissions reduction and the net number of jobs created or retained, achieved in Broad Program Areas that cumulatively account for approximately 80 percent of total Formula Grant expenditures in the 2009–2011 program years?

2. What is the magnitude of outcomes achieved by each of the most heavily-funded Broad Program Areas within the EECBG portfolio?

3. What are the key factors influencing the magnitude of EECBG outcomes?

These questions will be answered by evaluating a sample of 350 grant activity examples from a pool of direct grants and State sub-grants, all issued as part of the EECBG program.

Scale of the Information Collection

The DOE Formula grants are well-defined and have been further scrutinized by Oak Ridge National Laboratory (ORNL)/DOE and its contractors for categorization into Broad Program Areas and activities. The evaluation team will complete the process of counting and categorizing the State sub-grants. From these combined lists of grants, sorted by Broad Program Area, sub-area, and activity, and from a set of criteria developed by ORNL/DOE and its contractors, a sampling approach will be applied to select 350 grants for study. That random sample of projects will be taken from the six Broad Program Areas that, in combination, account for over 80 percent of total EECBG Formula Grant expenditures, which will allow valid inferences to be drawn for each Broad Program Area examined.

Data collection will begin with a combination of careful reviews of DOE program databases, grant status reports and applications (''engineering desk reviews''), and conversations with DOE project officers and Regional and State Coordinators. After this extensive preliminary data collection effort, interviews will be conducted with grant program managers and grant project managers for each sample point. The two survey instruments proposed are:

1. Grant Activity-Level Contact Survey: Verifies activities performed, measures installed, measure level data, and other relevant project information necessary to calculate program impacts and other metrics.

There will be 2 versions of this survey instrument: One for grant activities targeted to residential dwellings, and one for non-residential buildings.

2. Performance Indicators Survey: Collects information regarding operational success factors to be combined with grant data and secondary data on economic and other external factors for determining what conditions and elements are necessary for a successful project.

Together, these surveys will involve 700 respondents and entail a total burden of 642 hours. This calculation is based on the assumption that the telephone surveys used in this study will require an average of 55 minutes, depending on the individual survey instrument.

This evaluation approach will not include any data collection from individual service recipients to estimate savings or outcomes. This study will use data from the above-mentioned interviews plus additional information that can be obtained from program records and secondary sources, as well as engineering-based analytical methods, to produce energy savings and outcome estimates.

The above-described data collection instruments will be supplemented by additional records research and database review activities provided by the Grant Program Managers and Local Grant Activity Managers. These general recordkeeping activities will require an estimated 487 hours. Combining the burden hours associated with telephone surveys (642 hours) with the burden hours associated with general records review (487 hours) produces a total estimated burden of 1,129 hours.

Two key steps are being taken to avoid duplicating the efforts of any concurrent evaluations of EECBG activities: (1) Identifying results from any EECBG grant evaluation efforts taking place at the State level; and (2) coordinating with the Better Buildings Program evaluation concerning any data collection already taking place during the same time period that addresses EECBG grant activities.

The sample selection of Broad Program Areas and specific programmatic activities within each Broad Program Area is scheduled to be completed by June 2012. Data collection and calculation of outcomes are scheduled to be completed by October 2012.

The detailed study design and work plan for the EECBG evaluation has been available for public review since January 2012 at *http://weatherization.ornl.gov/eecbg.shtml.*

(5) *Annual Estimated Number of Respondents:* 700.

(6) *Annual Estimated Number of Total Responses:* 700.

(7) *Annual Estimated Total Number of Burden Hours (Interview and Record Review):* 1,129.

Statutory Authority: Title V, Subtitle E of the Energy Independence and Security Act of 2007, codified at 42 U.S.C. 17151–17158.

Issued in Washington, DC on February 1, 2012.

Henry C. Kelly,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–3535 Filed 2–14–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 16, 2012, 10 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

978th—Meeting

Regular Meeting

February 16, 2012, 10 a.m.

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Business Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
	Electric	
E–1	OMITTED	
E–2	RM11–14–000	Analysis of Horizontal Market Power under the Federal Power Act.
E–3	AD10–11–001, RM11–7–001	Frequency Regulation Compensation in the Organized Wholesale Power Markets.
E–4	RC11–6–000, RC12–1–000, RC12–2–000, RC12–6–000, RC12–7–000.	North American Electric Reliability Corporation.
E–5	EL11–22–001, QF11–115–002, QF11–116–002, QF11–117–002, QF11–118–002, QF11–119–002, QF11–120–002, QF11–121–002, QF11–122–002, QF11–123–002, QF11–124–002.	OREG 1, Inc., OREG 2, Inc., OREG 3, Inc., and OREG 4, Inc.
E–6	ER08–194–000, ER08–194–001, ER08–194–002, ER08–194–003, ER08–194–004.	Duquesne Light Company.
	ER08–1235–000, ER08–1235–001, ER08–1309–000, ER08–1370–000.	Midwest Independent Transmission System Operator, Inc. and Duquesne Light Company.
	ER08–1339–000, ER08–1339–001, ER08–1339–002, ER08–1345–000, ER08–1345–001, ER08–1345–002.	PJM Interconnection, L.L.C.
E–7	ER11–3616–000, ER11–3616–001, ER11–3616–002	California Independent System Operator Corporation.
E–8	ER11–2256–000, ER11–2256–002	California Independent System Operator Corporation.
E–9	RC08–5–001	U.S. Department of Energy, Portsmouth/Paducah Project Office.
E–10	ER08–386–001, ER08–386–002	Potomac-Appalachian Transmission Highline, LLC.
E–11	EL10–71–000	Puget Sound Energy, Inc.
E–12	RM11–9–000	Locational Exchanges of Wholesale Electric Power.
	Gas	
G–1	RM96–1–037	Standards for Business Practices for Interstate Natural Gas Pipeline.
G–2	RP09–487–000, RP10–307–000	High Island Offshore System, L.L.C.
G–3	OR12–1–000, OR12–2–000, OR12–3–000	Chevron Products Company v. SFPP, L.P., ConocoPhillips Company v. SFPP, L.P., Tesoro Refining and Marketing Company v. SFPP, L.P.
	Hydro	
H–1	P–13351–002	Marseilles Land and Water Company.
H–2	P–4632–035	Commissioners of Public Works of the City of Spartanburg, South Carolina.

Dated: February 9, 2012.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Springer or David Reininger at (703) 993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2012–3656 Filed 2–13–12; 4:15 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9632–5]

Farm, Ranch, and Rural Communities Advisory Committee (FRRCC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Charter Renewal.

The Charter for the Environmental Protection Agency's Farm, Ranch, and Rural Communities Advisory Committee (FRRCC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The purpose of the FRRCC is to provide advice to the Administrator of EPA on

environmental issues and policies that are of importance to agriculture and rural communities. It is determined that the FRRCC is in the public interest in connection with the performance of duties imposed on the Agency by law. Inquiries may be directed to Alicia Kaiser, U.S. EPA, (mail code 1101–A), 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone (202) 564–7273, or *kaiser.alicia@epa.gov.*

Dated: February 7, 2012.

Lawrence Elworth,

Agricultural Counselor to the Administrator.

[FR Doc. 2012–3537 Filed 2–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9632–2]

Final Reissuance of the NPDES General Permit for Facilities Related to Oil and Gas Extraction in the Territorial Seas of Texas

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final NPDES General Permit.

SUMMARY: The Director of the Water Quality Protection Division, EPA Region 6 today announces issuance of the final National Pollutant Discharge Elimination System (NPDES) general permit for the Territorial Seas of Texas (No. TXG260000) for discharges from existing and new dischargers and New Sources in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category as authorized by section 402 of the Clean Water Act, 33 U.S.C. 1342 (CWA). The permit supersedes the previous general permit (TXG260000) which expired on November 4, 2010. This permit renewal authorizes discharges from exploration, development, and production facilities located in and discharging to the territorial seas off Texas.

EPA proposed the draft permit in the **Federal Register** on October 24, 2011. EPA Region 6 has considered all comments received and makes one significant change to the proposed permit. A copy of the Region's responses to comments and the final permit may be obtained from the EPA Region 6 Internet site: *http://www.epa.gov/region6/water/npdes/genpermit/index.htm.*

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone: (214) 665–2145.

DATES: This permit was issued and effective on February 8, 2012, and expires February 7, 2017. In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on February 29, 2012. Under section 509(b) of the CWA, judicial review of this general permit can be held by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for judicial review. Under section 509(b)(2) of the CWA, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent are provided in Part I.A.2 of the permit.

SUPPLEMENTARY INFORMATION: EPA intends to use the reissued permit to regulate discharges from oil and gas extraction facilities located in the territorial seas off Texas under the CWA. To obtain discharge authorization, operators of such facilities must submit a new Notice of Intent (NOI). To determine whether your facility, company, business, organization, etc. is regulated by this action, you should carefully examine the applicability criteria in Part I, Section A.1 of the permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Other Legal Requirements

Oil Spill Requirements. Section 311 of the CWA prohibits the discharge of oil and hazardous materials in harmful quantities. Discharges that are in compliance with NPDES permits under normal operational conditions are excluded from the provisions of section 311. However, the permit does not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by section 311 of the CWA. This general permit does not authorize discharges beyond normal exploration, development, and production of oil and gas extraction activities. For instance, an oil spill caused by explosion, like the Deepwater Horizon event that extended from April 20, 2010 to September 19, 2010, when oil flowed from a well in the outer continental shelf portion of the Gulf of Mexico, or any potential gas spill, is not authorized by this general permit.

Endangered Species Act. EPA evaluated the potential effects of issuance of this permit upon listed threatened or endangered species. Based on that evaluation, EPA has determined that authorization of the discharges is not likely to adversely affect any listed threatened or endangered species. EPA initiated section 7 consultations in accordance with the Endangered Species Act with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), and received the concurrence letter dated July 15, 2011, from FWS (Consultation No. 21410–2004–I–0051), and a letter dated January 3, 2012, from NMFS (Ref. No. I/SER/2011/00705).

National Environmental Policy Act. EPA issued a final Environmental Impact Statement (EIS) which was published in the **Federal Register** at 69 FR 15829 on March 26, 2004, to evaluate the potential environmental consequences of this Federal general permit action, pursuant to its responsibilities under the National Environmental Policy Act of 1969 (NEPA). EPA responded to all issues raised on the Final EIS and issued a Record of Decision on January 11, 2005. EPA has prepared a Supplemental Information Report (SIR) dated September 2011 to the 2005 issued final EIS. The SIR is posted on the Internet at: *http://www.epa.gov/region6/water/npdes/genpermit/index.htm.*

Ocean Discharge Criteria Evaluation. For discharges into waters of the territorial sea, contiguous zone, or oceans, CWA section 403 requires EPA to consider guidelines for determining potential degradation of the marine environment in issuance of NPDES permits. These Ocean Discharge Criteria (40 CFR part 125, subpart M) are intended to ''prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal'' (45 FR 65942, October 3, 1980). EPA prepared a report on ''Ocean Discharge Criteria Evaluation for the NPDES General Permit for the Territorial Seas of the State of Texas'' dated October 25, 2002, when EPA proposed the reissuance of the general permit in 2004, and concluded that reissuance of the Oil and Gas General Permit for the Territorial Seas of Texas would not result in unreasonable degradation of the marine environment. EPA has reevaluated the ten (10) criteria in the SIR mentioned above.

Marine Protection, Research, and Sanctuaries Act. The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all

types of materials into ocean waters and establishes a permit program for ocean dumping. In addition the MPRSA establishes the Marine Sanctuaries Program, implemented by the National Oceanographic and Atmospheric Administration (NOAA), which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values. Pursuant to the Marine Protection and Sanctuaries Act, NOAA has not designated any marine sanctuaries within the area covered by the permit. The permit also prohibits discharges to marine sanctuary areas.

Magnuson-Stevens Fishery Management and Conservation Act. EPA has determined that reissuance of this general permit is not likely to adversely affect Essential Fish Habitat established under the 1996 amendments to the Magnuson-Stevens Fishery Management and Conservation Act. In a letter dated June 17, 2011, National Marine Fisheries Service (NMFS) concurred with the determination that issuance of the permit has no adverse effect to Essential Fish Habitat.

Coastal Zone Management Act. EPA has determined that the activities which are authorized by this permit are consistent with the local and state Coastal Zone Management Plans. The State of Texas issued a letter of consistency on January 26, 2012. It should be noted that decisions to allow oil and gas exploration and production in the territorial seas are made by the State of Texas and not the EPA.

State Certification. Under section 401(a)(1) of the CWA. EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. Section 301(b)(1)(C) of the CWA requires that NPDES permits contain conditions that ensure compliance with applicable state water quality standards or limitations. The permit contains limitations intended to ensure compliance with Texas Water Quality Standards and the corresponding implementation guidance. The Texas Railroad Commission issued the 401 certification on January 26, 2012.

Paperwork Reduction Act. The information collection required by this permit has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

This reissued permit requires reporting and application requirements for new facilities to comply with cooling water intake structure requirements and therefore it requires more reporting burdens for new facilities from those under the previous general permit. Since this permit is very similar in reporting and application requirements in discharges which are required to be monitored as the Western Gulf of Mexico Outer Continental Shelf (OCS) general permit (GMG290000) which also has cooling water intake structure requirements, the paperwork burdens are expected to be nearly identical. EPA estimated it would take an affected facility three hours to prepare the request for coverage and 3 hours per month to prepare discharge monitoring reports. It is estimated that the time required to prepare the request for coverage and discharge monitoring reports for this permit will be the same. A new facility may need more time to prepare information for cooling water intake structure requirements. This permit requires electronic reporting for discharge monitoring reports, and it will save some reporting time.

However, the alternative to obtaining authorization to discharge under this general permit is to obtain an individual permit. The burden of obtaining authorization to discharge under the general permit is expected to be significantly less than the burden of obtaining an individual permit.

Regulatory Flexibility Act. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq,* requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. The permit renewal issued today is not a ''rule'' subject to the Regulatory Flexibility Act. EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Offshore Subcategory guidelines on which many of the permit's effluent limitations are based. That analysis has shown that issuance of this permit would not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: February 8, 2012.

William K. Honker,

Acting Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. 2012–3584 Filed 2–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0040; FRL–9335–5]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review scientific issues concerning chlorpyrifos health effects.

DATES: The meeting will be held on April 10–13, 2012, from approximately 9 a.m. to 5:30 p.m.

Comments. The Agency encourages that written comments be submitted by March 27, 2012, and requests for oral comments be submitted by April 3, 2012. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after March 27, 2012, should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before February 29, 2012.

Webcast. This meeting may be webcast. Please refer to the FIFRA SAP's Web site, *http://www.epa.gov/scipoly/sap* for information on how to access the webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0040, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility 's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2012–0040. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Fred Jenkins, Jr., DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–3327; fax number: (202) 564–8382; email address: *jenkins.fred@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

C. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2012–0040 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES,** no later than March 27, 2012, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after March 27, 2012, should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Anyone submitting written comments at the meeting should bring 30 copies for distribution to FIFRA SAP.

2. *Oral comments.* The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than April 3, 2012, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are

limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Cholinergic and non-cholinergic mechanisms, cholinesterase inhibition, developmental neurotoxicity, epidemiology (particularly reproductive/developmental, environmental), exposure assessment of pesticides (both residential and agricultural worker), human biomonitoring data and interpretation of such data, human health risk assessment, mode of action analysis—people with experience with the mode of action framework, and organophosphate pesticides pharmacokinetics. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before February 29, 2012. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 10 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP Web site at *http://epa.gov/scipoly/sap* or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov.*

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the SAP. As a peer review mechanism, FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

Chlorpyrifos (0,0-diethyl-0-3,5,6-trichloro-2-pyridyl phosphorothioate) is a broad-spectrum, chlorinated organophosphate (OP) insecticide. Like other OPs, chlorpyrifos binds to and phosphorylates the enzyme acetylcholinesterase (AChE) in both the central (brain) and peripheral nervous systems. This can lead to accumulation of acetylcholine and, ultimately, at sufficiently high doses, to clinical signs of toxicity. In 2011, the Agency released a preliminary human health risk assessment for chlorpyrifos. The focus of this assessment was on the cholinesterase (ChE) inhibiting potential of chlorpyrifos. Consistent with this focus, EPA evaluated the extensive database of ChE data for multiple lifestages and selected points of departure (PoDs) based on consideration of all quality and reliable data. There is, however, a growing body of literature with laboratory animals (rats and mice) indicating that gestational and/or early postnatal exposure to chlorpyrifos may cause persistent effects into adulthood. The results of both *in vivo* and *in vitro* studies on chlorpyrifos have led some research groups to propose that changes in brain connectivity and/or neurochemistry may underlie these changes into adulthood. In addition, there are epidemiology studies evaluating pre- and post-natal chlorpyrifos or other OP exposure in

mother-infant pairs that have reported associations with birth outcomes, childhood neurobehavioral and neurodevelopment outcomes in the offspring when evaluated in neonates, infants, and young children.

In 2008, the FIFRA Scientific Advisory Panel (SAP) reviewed a draft science issue paper on the human health effects of chlorpyrifos which provided a preliminary review of the scientific literature on experimental toxicology and epidemiology studies available at that time. In 2010, the Agency developed a draft ''Framework for Incorporating Human Epidemiologic & Incident Data in Health Risk Assessment'' which provides the conceptual foundation for evaluating multiple lines of scientific evidence in the context of the understanding of the adverse outcome pathway (or mode of action). This draft framework uses modified Bradford Hill Criteria to evaluate the sufficiency of evidence to establish key events within a mode of action(s) and explicitly considers such concepts as strength, consistency, dose response, temporal concordance and biological plausibility. Since the 2008 SAP on chlorpyrifos, the Agency has performed further analyses on the existing and new epidemiology results in mothers and children, available biomonitoring data, and experimental toxicology studies evaluating proposed adverse outcome pathways in the context of human health risk assessment. Specifically, the Agency is evaluating available literature on the potential for chlorpyrifos to cause long term adverse effects from early life exposure, *in vivo* and *in vitro* studies evaluating mechanistic aspects of chlorpyrifos, and the potential for adverse effects below doses established from ChE inhibition that are used for regulatory purposes. At this time, the Agency is working towards a weight of evidence evaluation integrating the epidemiology studies with the experimental toxicology studies for the neurodevelopmental outcomes. This analysis is complex and multifaceted as it involves different lines of scientific evidence (i.e., *in vivo* and *in vitro* experimental toxicology studies, explicit consideration of adverse outcome pathways, exposure, epidemiology, and biomonitoring data). As such, the Agency believes that peer review on the status of the current analysis is important.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and ad hoc members for this meeting), and the meeting agenda will be available by approximately mid-March. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap.*

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP Web site or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 2, 2012.

Frank Sanders,

Director, Office of Science Coordination and Policy.

[FR Doc. 2012–3280 Filed 2–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9632–4]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Cancellation and Rescheduling of National Advisory Council for Environmental Policy and Technology (NACEPT) Committee Meeting.

SUMMARY: EPA announced in the **Federal Register** on January 12, 2012 [FRL–9617–7] a National Advisory Council for Environmental Policy and Technology (NACEPT) Meeting to be held at the EPA Potomac Yard Conference Center, One Potomac Yard, 2777 S. Crystal Drive, Arlington, VA 22202. Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of cancellation and rescheduling of that public meeting for the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. NACEPT members represent academia, industry, non-governmental organizations, and local, state, and tribal governments. The purpose of this meeting is to begin developing recommendations to the Administrator regarding actions that EPA can take in response to the National Academy of Sciences Report on ''Incorporating Sustainability in the U.S. Environmental Protection Agency.'' A copy of the agenda for the meeting will be posted at *http://www.epa.govofacmo/nacept/cal-nacept.htm.*

DATES: NACEPT has cancelled the two-day public meeting scheduled for February 13, 2012, from February 14, 2012. NACEPT will now hold the two-day public meeting on Monday, March 26, 2012, from 9 a.m. to 5:30 p.m. (EST) and Tuesday, March 27, 2012 from 8:30 a.m. to 2 p.m. (EST).

ADDRESSES: The meeting will be held at the EPA East Building Room 1153, 1201 Constitution Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Acting Designated Federal Officer, *joyce.mark@epa.gov,* (202) 564–2130, U.S. EPA, Office of Federal Advisory Committee Management and Outreach (1601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments for the March 26–27, 2012, NACEPT meeting should be sent to Eugene Green at *green.eugene@epa.gov* by Monday, March 19, 2012. The meeting is open to the public, with limited seating available on a first-come, first-served basis. Members of the public wishing to attend should contact Eugene Green at *green.eugene@epa.gov* or (202) 564–2432 by March 19, 2012.

Meeting Access: Information regarding accessibility and/or accommodations for individuals with disabilities should be directed to Eugene Green at the email address or phone number listed above. To ensure adequate time for processing, please make requests for accommodations at least 10 days prior to the meeting.

Dated: February 7, 2012.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 2012–3533 Filed 2–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0019; FRL–9337–4]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions were granted during the period October 1, 2011 to December 31, 2011 to control unforeseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–6027.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the emergency exemption of interest.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2012–0019. Publicly available docket materials are available either electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific.

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are emergency exemptions issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, and the duration of the exemption.

III. Emergency Exemptions

A. U.S. States and Territories

California

Environmental Protection Agency, Department of Pesticide Regulation

Specific Exemptions: EPA authorized the use of boscalid on Belgian endive to control sclerotinia (*Sclerotinia sclerotiorum*); December 1, 2011 to February 15, 2012. *Contact:* Stacey Groce.

EPA authorized the use of pyraclostrobin on Belgian endive to control sclerotinia (*sclerotinia sclerotiorum*); December 1, 2011 to February 15, 2012. *Contact:* Stacey Groce.

EPA authorized the use of hop beta acids in beehives to control varroa mite; December 22, 2011. Effective date; January 1, 2012 to December 31, 2012. *Contact:* Stacey Groce.

Colorado

Department of Agriculture

Specific Exemptions: EPA authorized the use of hop beta acids in beehives to control varroa mite; December 22, 2011. Effective date; January 1, 2012 to December 31, 2012. *Contact:* Stacey Groce.

EPA authorized the use of spirotetramat on onions, dry bulb, to control thrips; December 14, 2011 to September 30, 2012. *Contact:* Keri Grinstead.

Florida

Department of Agriculture and Consumer Services

Specific Exemptions: EPA authorized the use of hop beta acids in beehives to control varroa mite; December 22, 2011. Effective date; January 1, 2012 to December 31, 2012. *Contact:* Stacey Groce.

Idaho

Department of Agriculture

Specific Exemptions: EPA authorized the use of hop beta acids in beehives to control varroa mite; December 22, 2011. Effective date; January 1, 2012 to December 31, 2012. *Contact:* Stacey Groce.

Oregon

Department of Agriculture

Specific Exemptions: EPA authorized the use of hop beta acids in beehives to control varroa mite; December 22, 2011. Effective date; January 1, 2012 to December 31, 2012. *Contact:* Stacey Groce.

Texas

Department of Agriculture

Specific Exemptions: EPA authorized the use of spirotetramat on onions, dry bulb, to control thrips; December 22, 2011 to September 30, 2012. *Contact:* Keri Grinstead.

Washington

Department of Agriculture

EPA authorized the use of hop beta acids in beehives to control varroa mite; December 22, 2011. Effective date; January 1, 2012 to December 31, 2012. *Contact:* Stacey Groce.

B. Federal Departments and Agencies

Environmental Protection Agency

Office of Emergency Management

Quarantine exemption: EPA authorized the use of chlorine dioxide (gas), chlorine dioxide (liquid), ethylene oxide (gas), formaldehyde (gas), hydrogen peroxide and peracetic acid (liquid), hydrogen peroxide (vapor), and sodium hypochlorite (5.25%–6%) (liquid) on interior and exterior inanimate, non-food contact surfaces including buildings, structures, vehicles, articles/items, personal protective equipment, roads, sidewalks, and subway systems to inactivate *Bacillus anthracis* (anthrax) spores; October 24, 2011 to October 24, 2014. *Contact:* Princess Campbell.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 1, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–3156 Filed 2–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0012; FRL–9333–8]

Pesticide Products; Receipt of Applications To Register New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register new uses for pesticide products containing currently registered active ingredients, pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. EPA is publishing this Notice of such applications, pursuant to section 3(c)(4) of FIFRA.

DATES: Comments must be received on or before March 16, 2012.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number specified below, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number specified for the pesticide of interest as shown in the registration application summaries. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone or email. The mailing address for each contact person listed is: Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–00001 or Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System

(NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number). If you are commenting on a docket that addresses multiple products, please indicate to which registration number(s) or file symbol(s) your comment applies.

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications for New Uses

EPA received applications as follows to register pesticide products containing currently registered active ingredients pursuant to the provisions of section 3(c) of FIFRA, and is publishing this Notice of such applications pursuant to section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. Registration Numbers: 100–739, 100–1262, and 100–1386. *Docket Number:* EPA–HQ–OPP–2011–0300. *Company name and address:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Difenoconazole. *Proposed Uses:* Fruiting vegetable group 8–10, Low growing berry subgroup 13–07G, except cranberry, Citrus fruit group 10–10, and Pome fruit group and post harvest use on potato. *Contact:* Rose Kearns, Registration Division, (703) 305–5611, *kearns.rosemary@epa.gov*.

2. Registration Numbers: 100–921 and 100–922. *Docket Number:* EPA–HQ–OPP–2011–0086. *Company name and address:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Acibenzolar-s-methyl. *Proposed Uses:* low growing berry subgroup 13–07G. *Contact:* Rose Kearns, Registration Division, (703) 305–5611, *kearns.rosemary@epa.gov*.

3. Registration Number: 100–1312. *Docket Number:* EPA–HQ–OPP–2011–0300. *Company name and address:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Difenoconazole and Propiconazole. *Proposed Uses:* Fruiting vegetable group 8–10, Low growing berry subgroup 13–07G, except cranberry, Citrus fruit group 10–10, and Pome fruit group and post harvest use on potato. *Contact:* Rose Kearns, Registration Division, (703) 305–5611, *kearns.rosemary@epa.gov*.

4. Registration Number: 100–1313. *Docket Number:* EPA–HQ–OPP–2011–0300. *Company name and address:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Difenoconazole and Azoxystrobin. *Proposed Uses:* Fruiting vegetable group 8–10, Low growing berry subgroup 13–07G, except cranberry, Citrus fruit group 10–10, and Pome fruit group and post harvest use on potato. *Contact:* Rose Kearns, Registration Division, (703) 305–5611, *kearns.rosemary@epa.gov*.

5. Registration Number: 100–1317. *Docket Number:* EPA–HQ–OPP–2011–0300. *Company name and address:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Difenoconazole and Cyprodinil. *Proposed Uses:* Fruiting vegetable group 8–10, Low growing berry subgroup 13–07G, except cranberry, Citrus fruit group 10–10, and Pome fruit group and post harvest use on potato. *Contact:* Rose Kearns, Registration Division, (703) 305–5611, *kearns.rosemary@epa.gov*.

6. Registration Number 10163–277. *Docket Number:* EPA–HQ–OPP–2010–0916. *Company name and address:* Gowan Company, 370 South Main Street, Yuma, AZ 85364. *Active ingredient:* Hexythiazox. *Proposed Use:* Alfalfa, timothy, wheat. *Contact:* Olga Odiott, Registration Division, (703) 308–9369 *odiott.olga@epa.gov*.

7. *Registration Number:* 59441–RN. *Docket Number:* EPA–HQ–OPP–2011–1007. *Company name and address:* Kodak Company, 343 State Street, Rochester, New York 14650 .*Active ingredient:* Thymol. *Proposed Use:* Preservative in manufacture and storage of photographic, imaging, and thin film coating preparations. *Contact:* Jaclyn Carl, Antimicrobials Division, (703) 347–0213, *carl.jaclyn@epa.gov.*

8. *Registration Number:* 62719–442. *Docket Number:* EPA–HQ–OPP–2011–0343. *Company name and address:* Dow AgroSciences LLC, 9330 Zionsville Rd., Indianopolis, IN 46268–1054. *Active ingredient:* Methoxyfenozide. *Proposed Use:* Citrus group 10–10 and Root vegetable subgroup 1B. *Contact:* Clayton Myers, Registration Division, (703) 347–8874, *myers.clayton@epa.gov.*

9. *Registration Numbers:* 71711–18 and 71711–19. Docket Number: EPA–HQ–OPP–2011–0541. *Company name and address:* Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808. *Active ingredient:* Fenpyroximate, (E)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene] amino]oxy]methyl]benzoate and its Z-somer,(Z)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl) methylene]amino]oxy]methyl]benzoate. *Proposed Uses:* Avocado, sapote, black, canistel, sapote, mamey, mango, papaya, sapodilla, star apple, bean, snap, and tea, plucked leaves. *Contact:* Driss Benmhend, Registration Division, (703) 308–9525, *benmhend.driss@epa.gov*.

10. File Symbol: 84059–RT. *Docket Number:* EPA–HQ–OPP–2010–0058. *Company name and address:* Marrone Bio Innovations, Inc., 2121 Second St., Suite B–107, Davis, CA 95618. *Active ingredient: Chromobacterium subtsugae* strain PRAA4–1^{T}. *Proposed Use:* Residential uses. *Contact:* Jeannine Kausch, Biopesticides and Pollution

Prevention Division (7511P), (703) 347–8920, *kausch.jeannine@epa.gov*.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: February 3, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–3159 Filed 2–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–9336–3]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II., pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a November 23, 2011, **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the November 23, 2011, notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30 day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective February 15, 2012.

FOR FURTHER INFORMATION CONTACT: Jolene Trujillo, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0103; fax number: (703) 308–8090; email address: *trujillo.jolene@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–1017. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What action is the agency taking?

This notice announces the cancellation, as requested by registrants, of 28 products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

EPA registration No.	Product name	Chemical name
000239–02626	Ortho Home Defense Hi-Power Brand Indoor Insect Fogger.	MGK 264, Pyrethrins, Permethrin.
000499–00504	TC 235 Cold Fogger Concentrate	MGK 264,Pyrethrins, Piperonyl butoxide, 2, 4–Dodecadienoic acid, 3,7,11-trimethyl-, ethyl ester, (S–(E,E)).
000655–00308	Prentox Pyrethrum Extract "25"	Pyrethrins.
000769–00948	Pratt Cygon 2–E Systemic Insecticide	Dimethoate.
002724–00338	Zoecon RF–275	MGK 264, Piperonyl butoxide, Pyrethrins, S–Methoprene.
002724–00607	Farnam Pyrethrin Concentrate	Piperonyl butoxide, Pyrethrins.
002724–00706	Elite Flea and Tick Dip	MGK 264, Piperonyl butoxide, Pyrethrins.
002724–00707	Elite Extra-Strength Flea and Tick Dip	MGK 264, Piperonyl butoxide, Pyrethrins.
005887–00041	Black Leaf Tri-Basic Bordeaux Powder	Basic copper sulfate.
010807–00446	Purge II	Pyrethrins, Piperonyl butoxide.
010807–00448	Country Vet Flea & Tick Fogger with Growth Inhibitor.	MGK 264, Pyrethrins, Pyriproxyfen, Permethrin.
013283–00025	Rainbow Flying & Crawling Bug Killer II	Bioallethrin.
028293–00212	Unicorn Ear Miticide III	Pyrethrins, Piperonyl butoxide.
028293–00348	Unicorn Ear Miticide IV	Pyrethrins, Piperonyl butoxide.
040849–00046	Enforcer Four Hour Fogger V	Phenothrin, Tetramethrin.
056156–00001	X–100 Natural Seal Wood Preservative	2-(Thiocyanomethylthio) benzothiazole, Methylene bis (thiocyanate).
065092–00001	ZE LIN Chen Chalk	Tralomethrin.
074965–00002	Comet With Bleach Disinfectant Cleanser.	Sodium dichloroisocyanurate dihydrate.
075015–00001	Dead-Fast Insecticide Chalk	Tralomethrin.
080697–00009	Chlorpyrifos Technical	Chlorpyrifos.
CA010009	Supracide 25W	Methidathion.
CO080005	Dicofol 4E	Dicofol.
FL760014	Cythion Insecticide The Premium Grade Malathion.	Malathion.

TABLE 1—PRODUCT CANCELLATIONS—Continued

EPA registration No.	Product name	Chemical name
ID070002	Dicofol 4E	Dicofol.
ID990018	Kelthane MF Agricultural Miticide	Dicofol.
ME960001	Imidan 2.5 EC	Phosmet.
SD040004	Princep Caliber 90	Simazine.
UT070005	Dicofol 4E	Dicofol.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELED PRODUCTS

EPA company No.	Company name and address
239	The Scotts Company, P.O. Box 190, Marysville, OH 43040.
499	Whitmire Micro-Gen Research Laboratories, Inc., Agent: BASF Corp., 3568 Tree Court Industrial Blvd., St. Louis, MO 63122–6682.
655	Prentiss, Inc., Agent: Pyxis Regulatory Consulting, Inc., 4110 136th St. NW., Gig Harbor, WA 98332.
769	Value Gardens Supply, LLC, P.O. Box 585, Saint Joseph, MO 64502.
2724	Wellmark International, 1501 E. Woodfield Rd., Suite 200, West, Schaumburg, IL 60173.
5887	Value Gardens Supply, LLC, d/b/a Garden Value Supply, P.O. Box 585, Saint Joseph, MO 64502.
10807	Amrep, Inc., 990 Industrial Park Drive, Marietta, GA 30062.
13283	Rainbow Technology Corporation, Agent: RegWest Company LLC, 8203 West 20th St., Suite A, Greeley, CO 80634–4696.
28293	Phaeton Corporation, Agent Registrations by Design, Inc., P.O. Box 1019, Salem, VA 24153.
40849	ZEP Commercial Sales & Service, Agent: Connie Welch and Associates, 4196 Merchant Plaza #344, Lake Ridge, VA 22192.
56156	American Building Restoration Products, Inc., 9720 South 60th Street, Franklin, WI 53132.
65092	Ze Lin Chen, 137 Casuda Canyon Dr., #A, Monterey Park, CA 91754.
74965	Spic and Span, d/b/a Prestige Brands International, 90 North Broadway, Irvington, NY 10533.
75015	Bernard I. Segal, 2406 Vallecitos, La Jolla, CA 92037.
80697	Zhejian Tide Cropscience Co., LTD, Agent: Tide International USA, Inc., 21 Hubble, Irvine, CA 92618.
CA010009; ME960001.	Gowan Company, P.O. Box 5569, Yuma, AZ 85366–8844.
CO080005; ID070002; UT070005.	Makhteshim-Agan of North America, Inc., 4515 Falls of Neuse Rd., Suite 300, Raleigh, NC 27069.
FL760014	Lee County Mosquito Control District, P.O. Box 60005, Fort Myers, FL 33906.
ID990018	Dow Agrosciences, LLC, 9330 Zionsville Rd., 308/2E, Indianapolis, IN 46268–1054.
SD040004	Syngenta Crop Protection, LLC, d/b/a Syngenta, Crop. Protection, Inc., P.O. Box 18300, Greensboro, NC 27149–8300.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the November 23, 2011, **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Table 1 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are canceled. The effective date of the cancellations that are the subject of this notice is February 15, 2012. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** issue of November 23, 2011 (76 FR 72405) (FRL–9327–2). The comment period closed on December 21, 2011.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows:

A. Registrations Listed in Table 1 of Unit II. Except EPA Reg. Nos. 065092–00001 and 075015–00001

EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other

than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

B. EPA Registration Nos. 065092–00001 and 075015–0001 Listed in Table 1 of Unit II.

The cancellation of these products will be effective December 15, 2014. Thereafter, registrants will be prohibited from selling or distributing these two pesticide products, except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 2, 2012.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–2982 Filed 2–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9632–6]

Public Water System Supervision Program Approval for the State of Illinois; Tentative Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Illinois submitted a primacy application for its approved Public Water System Supervision Program. Illinois is applying its Long Term 2 Enhanced Surface Water Treatment Regulations to all Illinois water systems that use surface water and ground water under the influence of surface water as a source, thereby satisfying the requirements of the Long-Term 2 Enhanced Surface Water Treatment Rule. Illinois is also applying its Stage 2 Disinfectants and Disinfection Byproducts Regulations to all Illinois community and noncommunity water systems that add and/or deliver water that is treated with a primary or residual disinfectant other than ultraviolet light, thereby satisfying the requirements of the Stage 2 Disinfectants and Disinfection Byproducts Rule.

EPA has determined that the state regulations and procedures submitted by the State to EPA for review are no less stringent than the corresponding federal regulations. Therefore, EPA intends to award primacy to Illinois for Long-Term 2 Enhanced Surface Water Treatment and Stage 2 Disinfectants and Disinfection By-product Rules implementation. Any interested party may request a public hearing. A request for a public hearing must be submitted by March 16, 2012, to the Regional Administrator at the EPA Region 5 address shown below. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by March 16, 2012; EPA Region 5 will hold a public hearing. If EPA Region 5 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective on March 16, 2012. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection at the following offices: Illinois Pollution Control Board at the James R. Thompson Center, 100 W. Randolph, Suite 11–500, Chicago, Illinois 60601, and the United States Environmental Protection Agency, Region 5, Ground Water and Drinking Water Branch (WG–15J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Janet Kuefler, EPA Region 5, Ground Water and Drinking Water Branch, at the address given above, by telephone at (312) 582–5814, or at *kuefler.janet@epa.gov.*

Authority: Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300g–2 (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: January 23, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–3588 Filed 2–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1196; FRL–9631–7]

Recent Postings of Broadly Applicable Alternative Test Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the broadly applicable alternative test method approval decisions the EPA has made under and in support of New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) under the Clean Air Act (CAA) in 2011.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each alternative test method approval document is available on the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html.* For questions about this notice, contact Ms. Lula H. Melton, Air Quality Assessment Division, Office of Air Quality Planning and Standards (E143–02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–2910; fax number: 919–541–0516; email address: *melton.lula@epa.gov.* For technical questions about individual alternative test method decisions, refer to the contact person identified in the individual approval documents.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This notice will be of interest to entities regulated under 40 Code of Federal Regulations(CFR) parts 59, 60, 61, and 63, state, local, and tribal agencies, and the EPA Regional Offices responsible for implementation and enforcement of regulations under 40 CFR parts 60, 61, and 63.

B. How can I get copies of this information?

You may access copies of the broadly applicable alternative test method approval documents from the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html.*

II. Background

Broadly applicable alternative test method approval decisions made by the EPA in 2011 under the National Volatile Organic Compound Emission Standards for Consumer and Commercial Products, 40 CFR part 59, NSPS, 40 CFR part 60, and NESHAP, 40 CFR parts 61 and 63 are identified in this notice (see Table 1). Source owners and operators may voluntarily use these broadly applicable alternative test methods subject to their specific applicability. Use of these broadly applicable alternative test methods does not change the applicable emission standards.

As explained in a previous **Federal Register** notice published at 72 FR 4257 (January 30, 2007) and found on the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html,* the EPA Administrator has the authority to approve the use of alternative test methods to comply with requirements under 40 CFR parts 60, 61, and 63. This authority is found in sections 60.8(b)(3), 61.13(h)(1)(ii), and 63.7(e)(2)(ii). In the past, we have performed thorough technical reviews of numerous requests for alternatives and modifications to test methods and procedures. Based on these reviews, we have often found that these changes or alternatives would be equally valid and appropriate to apply to other sources within a particular class, category, or subcategory. Consequently, we have concluded that, where a method modification or an alternative method is clearly broadly applicable to a class, category, or subcategory of sources, it is both more equitable and efficient to approve its use for all appropriate sources and situations at the same time.

It is important to clarify that alternative methods are not mandatory but permissive. Sources are not required to employ such a method but may choose to do so in appropriate cases. Source owners or operators should review the specific broadly applicable alternative method approval decision on the EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html* before electing to employ it. As per 63.7(f)(5), by electing to use an alternative method for 40 CFR part 63 standards, the source owner or operator must continue to use the alternative method until approved otherwise.

The criteria for approval and procedures for submission and review of broadly applicable alternative test methods are outlined at 72 FR 4257 (January 30, 2007). We will continue to announce approvals for broadly applicable alternative test methods on the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html* and annually publish a notice that summarizes approvals for broadly applicable alternative test methods.

This notice comprises a summary of ten such approval documents added to our Technology Transfer Network from January 1, 2011, through December 31, 2011. The alternative method decision letter/memo number, the reference method affected, sources allowed to use this alternative, and the modification or alternative method allowed are summarized in Table 1 of this notice. Please refer to the complete copies of these approval documents available from the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html* as the table serves only as a brief summary of the broadly applicable alternative test methods. If you are aware of reasons why a particular alternative test method approval that we issued should not be broadly applicable, we request that you make us aware of the reasons in writing, and we will revisit the broad approval. Any objection to a broadly applicable alternative test method, as well as the resolution of that objection, will be announced on the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html* and in the subsequent **Federal Register** notice. If we decide to retract a broadly applicable test method, we would continue to grant case-by-case approvals, as appropriate, and would (as states, local and tribal agencies and the EPA Regional Offices should) consider the need for an appropriate transition period for users either to request case-by-case approval or to transition to an approved method.

Dated: February 9, 2012.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

TABLE 1—APPROVED ALTERNATIVE TEST METHODS AND MODIFICATIONS TO TEST METHODS REFERENCED IN OR PUBLISHED UNDER APPENDICES IN 40 CFR PARTS 59, 60, 61, AND 63 MADE BETWEEN JANUARY 2011 AND DECEMBER 2011

Alternative method decision letter/memo No.	As an alternative or modification to . . .	For . . .	You may . . .
ALT–068	Method 24–Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings.	Sources subject to 40 CFR part 59, subpart D–National Volatile Organic Emissions for Architectural Coatings.	Use method in 40 CFR part 59, subpart D, Appendix A in lieu of Method 24.
ALT–081	Method 25C–Determination of Nonmethane Organic Compounds (NMOC) in Landfill Gases.	Sources subject to 40 CFR part 60, subpart WWW–Standards of Performance for Municipal Solid Waste Landfills.	Use a combination of Method 25C probes and leachate vents and gas wells to collect NMOC samples.
ALT–082	Method 9–Visual Determination of the Opacity of Emissions from Stationary Sources.	Sources subject to 40 CFR parts 60, 61, and 63.	Use the American Society for Testing and Materials (ASTM) D 7520–09 with specified limitations in lieu of Method 9.
ALT–084	ASTM D 6216–98	Continuous opacity monitoring systems (COMS) specified in Performance Specification 1 (PS–1) of 40 CFR, part 60, Appendix B.	Certify your COMS with either ASTM D 6216–98, D 6216–03, or D 6216–07.
ALT–085	ASTM D 4084–07	Sources subject to 40 CFR part 63, subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.	Use ASTM D 5504–08 to determine the hydrogen sulfide concentration in fuel gas at boilers in lieu of ASTM D 4084–07.

TABLE 1—APPROVED ALTERNATIVE TEST METHODS AND MODIFICATIONS TO TEST METHODS REFERENCED IN OR PUBLISHED UNDER APPENDICES IN 40 CFR PARTS 59, 60, 61, AND 63 MADE BETWEEN JANUARY 2011 AND DECEMBER 2011—Continued

Alternative method decision letter/memo No.	As an alternative or modification to . . .	For . . .	You may . . .
ALT–086	ASTM D 3792 (GC Procedure) or ASTM D 4017 (Karl Fisher Titration).	Sources subject to 40 CFR parts 60, 61, and 63.	Use ASTM D 7358–07 to determine the water content of coatings in lieu of ASTM D 3792 or ASTM D 4017.
ALT–087	Conducting a stratification test as required by Method 7E when testing reciprocating internal combustion engines.	Sources subject to 40 CFR part 60, subpart IIII–Standards of Performance for Stationary Compression Ignition Internal Combustion Engines and subpart JJJJ–Standards of Performance for Stationary Spark Ignition Internal Combustion Engines.	Use single-point sampling at the centroid of the exhaust when using Method 7E to determine NO_X emissions from Federally-regulated engines.
ALT–088	Using a mass flowmeter calibrated against Method 2–Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube).	Sources subject to 40 CFR part 60, subpart WWW–Standards of Performance for Municipal Solid Waste Landfills.	Use the mass flowmeter recently calibrated by the manufacturer for measuring flow rate in lieu of calibration by Method 2.
ALT–089	ASTM D 4084–07	Sources subject to 40 CFR part 63, subpart DDDDD–National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.	Use Method 15 to measure H_2S in refinery fuel gas in lieu of ASTM D 4084–07.
ALT–090	Determining vapor pressure required by 40 CFR part 60, subpart Kb.	Source applicability determination in accordance with Section 60.110b of 40 CFR part 60, subpart Kb-Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	Use the ''Test Method for Vapor Pressure of Reactive Organic Compounds in Heavy Crude Oil Using Gas Chromatography'' dated May 28, 2002 by David Littlejohn and Donald Lucas to measure vapor pressure of any volatile organic liquid containing heavy crude oil.

Source owners or operators should review the specific broadly applicable alternative method approval letter on the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html* before electing to employ it.

[FR Doc. 2012–3581 Filed 2–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9632–3]

Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency.

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is inviting nominations from a diverse range of qualified candidates to be considered for appointment to fill vacancies on the National Advisory Committee (NAC) and the Governmental Advisory Committee (GAC) to the U.S. Representative to the Commission for Environmental Cooperation (CEC). Vacancies on these two committees are expected to be selected by March 31, 2012. We encourage nominations to be submitted as soon as possible. Additional sources may be utilized in the solicitation of nominees.

SUPPLEMENTARY INFORMATION: The National Advisory Committee and the Governmental Advisory Committee advise the EPA Administrator in her capacity as the U.S. Representative to the CEC Council. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), the North American Free Trade Agreement (NAFTA) Implementation Act, Public Law 103–182, and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The Committees are responsible for providing advice to the United States Representative on a wide range of strategic, scientific, technological, regulatory and economic issues related to implementation and further elaboration of the NAAEC. The National Advisory Committee consists of 13 representatives from environmental non-profit groups, business and industry, and educational institutions. The Governmental Advisory Committee consists of 12 representatives from state, local, and tribal governments. Members are appointed by the EPA Administrator for a two-year term. The committees usually meet 3 times per year and the average workload for committee members is approximately 10 to 15 hours per month. Members serve on the committees in a voluntary capacity. Although we are unable to provide compensation or an honorarium for your services, you may receive travel and per diem allowances, according to applicable federal travel regulations. EPA is seeking nominations from all sectors, including academia, industry, non-governmental organizations, and state, local and tribal governments. Nominees will be considered according

to the mandates of FACA, which requires committees to maintain diversity across a broad range of constituencies, sectors, and groups. EPA values and welcomes diversity. In an effort obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups. The following criteria will be used to evaluate nominees:

- Professional knowledge of the subjects examined by the committees, including trade and environment issues, the NAFTA, the NAAEC, and the CEC.
- Represent a sector or group involved in trilateral environmental policy issues.
- Senior-level experience in the sectors represented on both committees.
- A demonstrated ability to work in a consensus building process with a wide range of representatives from diverse constituencies.

Nominations must include a resume and a short biography describing the professional and educational qualifications of the nominee, as well as the nominee's current business address, email address, and daytime telephone number. Interested candidates may self-nominate. Anyone interested in being considered for nomination is encouraged to submit their application materials as soon as possible. To help the Agency in evaluating the effectiveness of its outreach efforts, please tell us how you learned of this opportunity. Please be aware that EPA's policy is that, unless otherwise prescribed by statute, members generally are appointed for two-year terms.

SUBMIT NOMINATIONS TO: Oscar Carrillo, Designated Federal Officer, Office of Federal Advisory Committee Management and Outreach, U.S. Environmental Protection Agency (1601–M), 1200 Pennsylvania Avenue NW., Washington, DC 20460. You may also email nominations with subject line COMMITTEE RESUME 2012 to *carrillo.oscar@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Oscar Carrillo, Designated Federal Officer, U.S. Environmental Protection Agency (1601–M), Washington, DC 20460; telephone (202) 564–0347; fax (202) 564–8129; email *carrillo.oscar@epa.gov.*

Dated: February 6, 2012.

Oscar Carrillo,

Designated Federal Officer.

[FR Doc. 2012–3531 Filed 2–14–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 16, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *judith-b.herman@fcc.gov*. To submit your PRA comments by email send them to: *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0690.

Title: Section 101.17, Performance Requirements for the 38.0–40.0 GHz Frequency Band.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; Federal Government and State, Local, or Tribal Government.

Number of Respondents: 67 respondents; 975 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: At 10-year license renewal.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4(i), 303(c), 303(f), 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,950 hours.

Total Annual Cost: $260,000.

Privacy Impact Assessment: N/A.

Needs and Uses: The Commission is seeking OMB approval for an extension of this information collection in order to obtain the full three-year approval from them. There are no changes to the reporting requirements. The Commission is reporting a decrease in the number of respondents for this submission to OMB. The number of responses, burden hours and annual costs remain the same as what was reported to OMB in 2009.

Pursuant to 47 CFR 101.17, all 38.6–40.0 GHz band licensees must demonstrate substantial service at the time of license renewal. A licensee's substantial service showing should include but not be limited to, the following information for each channel for which they hold a license, in each Economic Area (EA) or portion of EA covered by their license, in order to qualify for renewal of that license. The information provided will be judged by the Commission to determine whether the licensee is providing service which rises to the level of ''substantial'':

(1) A description of the 38.6–40.0 GHz band licensee's current service in terms of geographic coverage;

(2) A description of the 38.6–40.0 GHz band licensee's current service in terms of population served, as well as any additional service provided during the license term; and

(3) A description of the 38.6–40.0 GHz band licensee's investments in its

system(s) (type of facilities constructed and their operational status is required).

Any 38.6–40.0 GHz band licensees adjudged not to be providing substantial service will not have their license(s) renewed.

The requirement to demonstrate substantial service happens once every 10 years. Every licensee in this band will have to make a showing in the next three years because of when the licenses were originally issued and our decision to extend the deadline for some licensees. However, the number of respondents that will need to comply with this substantial service requirement of the 47 CFR 101.17 within the period covered by this submission is far less than the Commission originally sought and received OMB approval in 2006.

Without this information the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–3429 Filed 2–14–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: BBC BROADCASTING, INC, Station KPRI, Facility ID 21416, BP–20090226AAF, From FERNDALE, WA, To POINT ROBERTS, WA; CUMULUS LICENSING LLC, Station WYOK, Facility ID 8680, BPH–20120131AJS, From ATMORE, AL, To SARALAND, FL; GRACE BAPTIST CHURCH OF ORANGE BURG, Station NEW, Facility ID 171479, BMPED–20120131ALI, From RIDGEVILLE, SC, To ST. GEORGE, SC; RADIO LICENSE HOLDING II, LLC, Station WYAY, Facility ID 48727, BPH–20120131AHR, From GAINESVILLE, GA, To SANDING SPRINGS, GA.

DATES: Comments may be filed through April 16, 2012.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2012–3561 Filed 2–14–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-ScottRodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED JANUARY 1, 2012 THRU JANUARY 31, 2012

01/03/2012		
20120360	G	Pall Corporation; ForteBio, Inc.; Pall Corporation.
20120362	G	Wells Fargo & Company; Long Point Capital Fund. L.P.; Wells Fargo & Company.
20120363	G	Sterling Holdings Ultimate Parent, Inc.; Acxiom Corporation; Sterling Holdings Ultimate Parent, Inc.
20120364	G	Apollo Investment Fund VII, L.P.; Pearls Invest S.a.r.l.; Apollo Investment Fund VII, L.P.
20120365	G	AEI Fisker Investments II, LLC; Fisker Automotive Holdings, Inc.; AEI Fisker Investments II, LLC.
20120367	G	Leggett & Platt, Incorporated; Tinicum Capital Partners II, L.P.; Leggett & Platt. Incorporated.
20120368	G	International Business Machines Corporation; DemandTec. Inc.; International Business Machines Corporation.
20120369	G	Tilman J. Fertitta; Morton's Restaurant Group, Inc.; Tilman J. Fertitta.
20120371	G	Baxter International Inc.; Synovis Life Technologies, Inc.; Baxter International Inc.
01/05/2012		
20120375	G	Prestige Brands Holdings, Inc.; GlaxoSmithKline plc; Prestige Brands Holdings, Inc.
20120381	G	PTT Global Chemical Public Company; Financiere Foret S.a r.l.; PTT Global Chemical Public Company.
01/06/2012		
20120334	G	Gilead Sciences, Inc.; Pharmasset Inc.; Gilead Sciences, Inc.
20120352	G	Humana Inc.; SeniorBridge Family Companies, Inc.; Humana Inc.
20120373	G	Symantec Corporation; Live0fficeHolding Corporation; Symantec Corporation.
20120376	G	Project Barbour Holdings Corporation; Blue Coat Systems, Inc.; Project Barbour Holdings Corporation.

EARLY TERMINATIONS GRANTED JANUARY 1, 2012 THRU JANUARY 31, 2012—Continued

20120379	G	Bank of Montreal ; Virtus Investment Partners, Inc.; Bank of Montreal.
		01/09/2012
20120380	G	Wellspring Capital Partners V, L.P.; Sun Capital Partners III QP, L.P.; Wellspring Capital Partners V, L.P.
20120383	G	Bain Capital Fund X, L.P.; SquareTrade, Inc.; Bain Capital Fund X, L.P.
20120386	G	Ann Konecny; Dean Operations, Inc.; Ann Konecny.
20120387	G	Kyocera Corporation; Japan Industrial Fund II, L.P.; Kyocera Corporation.
		01/10/2012
20120111	G	UG1 Corporation; Energy Transfer Partners, L.P.; UGI Corporation.
20120348	G	AbitibiBowater Inc.; Fibrek Inc.; AbitibiBowater Inc.
		01/11/2012
20120346	G	Marian Health System, Inc.; Affinity Health System; Marian Health System, Inc.
		01/12/2012
20120382	G	International Business Machines Corporation; MEP Holdings I, LLC; International Business Machines Corporation.
20120385	G	Lone Star V Fund (U.S.), L.P.; Winn-Dixie Stores, Inc.; Lone Star V Fund (U.S.), L.P.
20120395	G	L–3 Communications Holdings, Inc.; Danaher Corporation; L–3 Communications Holdings, Inc.
20120396	G	FMC Technologies, Inc.; Schilling Robotics, Inc.; FMC Technologies, Inc.
		01/13/2012
20120399	G	GS Road Investors, L.L.C.; ArcLight Energy Partners Fund III, L.P.; GS Road Investors, L.L.C.
20120402	G	ESL Partners, L.P.; Sears Holdings Corporation; ESL Partners, L.P.
20120409	G	Det Norske Veritas Foundation; N.V. KEMA; Det Norske Veritas Foundation.
		01/18/2012
20120377	G	Oak Investment Partners X, Limited Partnership; Visto Corporation; Oak Investment Partners X, Limited Partnership.
		01/19/2012
20120417	G	BRH Holdings, L.P.; Michael J. Levitt; BRH Holdings, L.P.
		01/20/2012
20120411	G	InfoSpace, Inc.; TA IX L.P.; InfoSpace, Inc.
		01/23/2012
20120418	G	BE Aerospace, Inc.; Douglas and Catherine Davis; BE Aerospace, Inc.
20120420	G	RTI International Metals, Inc.; Marathon Fund Limited Partnership V; RTI International Metals, Inc.
20120422	G	Sigma-Aldrich Corporation; Avista Capital Partners, L.P.; Sigma-Aldrich Corporation.
		01/24/2012
20120151	G	Oracle Corporation; RightNow Technologies, Inc.; Oracle Corporation
20120433	G	Acadia Healthcare Company, Inc.; Thoma Cressey Fund VIII, L.P.; Acadia Healthcare Company, Inc.
20120435	G	Lightyear Fund III, L.P.; Sterling Capital Partners II, L.P.; Lightyear Fund III, L.P.
		01/25/2012
20120428	G	Chicago Growth Partners II, L.P.; Diane Trister Dodge; Chicago Growth Partners II, L.P.
		01/26/2012
20120430	G	Cerberus Institutional Partners, L.P.; Hayes Lemmerz International, Inc.; Cerberus Institutional Partners, L.P.
		01/27/2012
20120445	G	American Securities Partners V. L.P.; Blue Water Communications Group LLC; American Securities Partners V. L.P.
20120451	G	Anglo American plc; DB Investments S.A.; Anglo American plc.
		01/30/2012
20120441	G	Pembina Pipeline Corporation; Provident Energy Ltd.; Pembina Pipeline Corporation.
20120454	G	Tokio Marine Holdings, Inc.; Robert Rosenkranz; Tokio Marine Holdings. Inc.
		01/31/2012
20120429	G	BMC Software, Inc.; Numara Software Holdings, Inc.; BMC Software, Inc.

For Further Information Contact: Renee Chapman, Contact Representative; or Theresa Kingsberry, Legal Assistant; Federal Trade Commission, Premerger Notification Office,Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–3310 Filed 2–14–12; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Use of Deliberative Methods to Enhance Public Engagement in the Agency for Healthcare Research and Quality's (AHRQ's) Effective Healthcare (EHC) Program and Comparative Effectiveness Research (CER) Enterprise.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on December 1st, 2011 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by March 16, 2012.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Use of Deliberative Methods To Enhance Public Engagement in the Agency for Healthcare Research and Quality's (AHRQ's) Effective Healthcare (EHC) Program and Comparative Effectiveness Research (CER) Enterprise

With this project, AHRQ seeks evidence on the feasibility and usefulness of public deliberation as an approach to obtaining public input on questions related to the conduct and use of comparative effectiveness research (CER). Although stakeholder engagement has been central to the Effective Healthcare (EHC) program to date, public input has not traditionally been used to inform and guide broad strategies related to the use of evidence to inform decisions. This study would provide a research base to address this gap. This project closely ties to AHRQ's efforts to improve the rigor of methods, as it will generate methodological evidence through a randomized controlled experiment comparing five distinct methods of public deliberation to find the most effective approaches for involving the general public, including members of AHRQ's priority populations, in questions related to the research enterprise.

Public deliberation is a strategy for engaging lay people in informing decisions when these decisions require consideration of values and ethics in addition to scientific evidence. It includes three core elements:

(1) Convening a group of people (either in person or via online technologies to connect people in remote locations),

(2) Educating the participants on the relevant issue(s) through dissemination of educational materials and/or the use of content experts, and

(3) Having the participants engage in a reason-based discussion, or deliberation, on all sides of the issue(s).

AHRQ wishes to study the effectiveness of public deliberation, because it offers the opportunity to obtain public input on complex topics in an environment that encourages participants to educate themselves about the topic and discuss it in a thoughtful, respectful manner. Information about the topic is intentionally neutral and respectful of the full range of underlying values and experience with health care issues in the population. This approach is designed to improve upon the sometimes superficial or ''top of mind'' responses that are often provided by public opinion surveys. AHRQ views public deliberation as a potential source of higher quality public input on issues fundamental to the Agency's mission, such as the best and most effective ways to use comparative effectiveness research, than has heretofore been available.

Several distinct deliberative methods have been developed and used previously. They share the three core elements of public deliberation, but differ on key features of implementation such as duration, whether they take place in-person or online, and the use of content experts. Although there is considerable theoretical and case study literature endorsing the value of public deliberation, there has been little empirical research about its effectiveness and even less about the comparative merits of different deliberative methods (Community Forum Deliberative Methods Literature Review, 2010).

The objectives of this study are to:

1. Obtain informed and deliberated input from lay people on important questions underlying AHRQ's research program; and

2. Expand the evidence base for the use of public deliberation methods for exploring issues relevant to health care research by comparing the outcomes of five distinct deliberative methods to a control condition and to each other.

This study is being conducted by AHRQ through its contractor, the American Institutes of Research (AIR), pursuant to AHRQ's statutory authority to (1) promote health care quality improvement by conducting and supporting both research that develops and presents scientific evidence regarding all aspects of health care and the synthesis and dissemination of available scientific evidence for use by policymakers, among others, and (2) conduct and support research, provide technical assistance, and disseminate information on healthcare and on systems for the delivery of such care. See 42 U.S.C. 299(b)(1)(A), (D), (F), and (G); 42 U.S.C. 299(b)(2); 42 U.S.C. 299a(a)(1)–(4).

Method of Collection

To achieve the objectives of this study the following activities and data collections will be implemented:

(1) Participant recruitment—A short screening questionnaire, including a brief overview of the study, will be used to recruit persons for the study.

(2) Educational Materials—Educational materials are designed to inform participants about the topics that are being deliberated and will be

provided to all 1,685 participants recruited before the implementation of any of the methods, but after the administration of the Knowledge and Attitudes Pre-test Survey (described below). Additional content provided during the deliberative method sessions includes an overview of the study and the background materials needed by participants to competently deliberate the issues. For two methods (ODP and IDP; see below) educational materials to be used during the sessions will be sent to participants before the sessions (but after administration of the pre-test).

(3) Deliberative Discussion Groups and Control Group—The purpose of the discussion groups is to obtain informed and deliberated input from lay people on an important set of issues underlying health care research. Participants will be randomly assigned to one of the five deliberative methods or a control condition. The five methods were selected because they have been previously implemented and vary on key features that may affect the scalability and effectiveness of the methods, including: duration (from two hours to three days), mode of implementation (online versus in person), role of content experts, and time between sessions allowing participants to seek additional information on the issues and communicate informally with other participants. The subject of the deliberations is the use of research evidence in healthcare decision-making. This deliberative topic encompasses several themes or ''variations'' that will be elaborated in the deliberations:

1. Use of evidence to encourage better healthcare: Is evidence useful (or, what kind of evidence is useful) to a physician and a patient who are considering a test or treatment that has been found to be ineffective, less effective than another, riskier than another, or for which effectiveness has not been demonstrated?

2. Use of evidence to encourage better value: Is evidence useful (or, what kind of evidence is useful) to a physician and a patient who are considering a test or treatment that is effective even though an equally effective but less expensive alternative is available?.

3. Decision-making when evidence shows more complex trade-offs: Is evidence useful (or, what kind of evidence is useful) in treatment decisions that involve the balancing of effectiveness, risk, and value?

The issues involved in each variation will be discussed in the context of specific comparative effectiveness research (CER) examples. These ''vignettes'' illustrate the issues and elicit participants' input on the issues and the values employed by participants in the deliberations.

(4) Knowledge and Attitudes Pre-test Survey — This survey will measure knowledge of and attitudes about the health issues discussed in the deliberations. It will be administered to deliberation participants and controls before educational materials are sent or the methods are implemented.

As described, study participants will be provided with educational materials related to the deliberative topic. In order to assess whether or not participants were sufficiently informed on the topics addressed in the materials, the Knowledge and Attitudes Survey contains items assessing knowledge of medical research and medical evidence, of comparative effectiveness research, and of healthcare costs. The attitudinal questions refer to the use of medical evidence in healthcare decision making. They include attitudes about health care decision-making when research findings can provide no support for, or conflict with patient and doctor preferences for particular treatments.

The questionnaire will also gather demographic and other information necessary to characterize the study sample, test the success of the randomization, and define population subgroups for which variation in outcomes will be examined. The demographic variables also will be used to control for participant and group characteristics that may influence the outcomes. Even though the design involves randomization, and these characteristics should be balanced across groups, including them in the statistical models guards against inadequate results from randomization.

The variables to be measured in the Knowledge and Attitudes Pre-test Survey include:

- Sociodemographic characteristics: gender, age, marital status, education, employment status, household income, race/ethnicity, priority population, languages spoken (in addition to English).
- General health status.
- Recent experience with the healthcare system (e.g., seeing a healthcare provider more than three times for the same condition in the last 12 months).
- Health insurance coverage.
- Health information-seeking behavior (e.g., the extent to which people seek healthcare information or rely on their doctors to provide information).

(5) Knowledge and Attitudes Post-test Survey—This survey will measure knowledge of and attitudes about the issues discussed in the deliberations after the deliberations take place. It will be administered to deliberation participants and controls within one week following conclusion of the deliberative methods and will include the same knowledge and attitude questions as the pre-test questionnaire.

(6) Deliberative Experience Survey—As described above, the five deliberative methods being tested vary in terms of duration, mode, use of educational materials, and time between deliberative sessions. A one-time survey will be administered to participants in the deliberative methods after implementation of the experimental conditions to compare deliberative methods to each other. Levels of discourse quality and implementation quality achieved will be assessed. Using multi-item scales, the survey will measure the following:

Discourse Quality

- Equal participation in the discussions
- Respect for others' opinions and tolerance of differing perspectives
- Appreciation of perspectives other than their own
- Reasoned justification of ideas: sharing the reasoning or rationale for positions, opinions, beliefs, or preferences

Implementation Quality

- Quality of group facilitation
- Quality of the educational materials provided
- Quality of the experts
- Transparency of the process and use of the results
- Participants' perceived value of method
- Participants' view of the influence the results will have on programs

In sum, information collection in this study will entail qualitative transcript review and quantitative surveys. This information will be used to describe and summarize the input obtained from the participants in the deliberative groups concerning the use of evidence, presenting the findings in reports for AHRQ and the public.

The information from the surveys also will be used to expand the evidence base for public deliberation. The experiment is designed to: (1) Compare the effectiveness of the five deliberative methods to the control condition and to each other, (2) compare the quality of the discourse achieved by the deliberative methods to each other, (3) assess the quality of implementation of the five methods, and (4) test for variation in effectiveness and discourse quality by features of the deliberations

and for population subgroups defined by sociodemographic characteristics of the participants.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden associated with the respondents' time to participate in this research. The total annualized burden hours are estimated to be 11,647 hours. The burden estimate comprises the following activities:

Participant Recruitment—The screening questionnaire and recruitment letter and materials will be sent to 1,685 participants. We estimate that it will take 15 minutes to complete the questionnaire and review the recruitment letter and materials.

Educational materials—Educational materials will be provided to all 1,685 participants recruited before the implementation of any of the methods. We estimate that it will take up to 1 hour to review the materials.

Short Citizens' Deliberation (SCD): This method will be tested with 192 participants (12 groups). Participants will attend a single, 2-hour in-person meeting.

Online Deliberative Polling® (ODP): This method will be tested with 288 participants (24 groups) and will consist of 4 online sessions over the course of 4 weeks; in total, this method will take about 5 hours per person.

In-Person Deliberative Polling® (IDP): This method will be tested with 288 participants (16 groups); participants will attend a single in-person meeting, lasting a full day.

Citizens' Panel (CP): This method will be tested with 96 participants (4 groups); participants will attend a 3-day, in-person meeting.

Interrupted Deliberation (ID): This method will be tested with 192 participants (12 groups). Participants will attend 2 in-person meetings, lasting 3 hours each, a week apart. Between meetings, participants will be asked to access an online platform. In total, this method will take about 6 hours per person.

Knowledge and Attitudes Pre-test Survey: This survey will be administered to 1,685 participants and will take an estimated 30 minutes to complete.

Knowledge and Attitudes Post-test Survey: This survey will be administered to 1,685 participants and will take an estimated 20 minutes to complete.

Deliberative Experience Survey: This survey will be administered to 1,056 deliberative methods participants at the conclusion of the deliberative method. It will take about 15 minutes to complete.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name/Deliberative method	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Recruitment and Consent Materials	1,685	1	15/60	421
Short Citizens' Deliberation (SCD)	192	1	2	384
Online Deliberative Polling® (ODP)	288	1	5	1,440
In-Person Deliberative Polling® (IDP)	288	1	9	2,592
Citizens' Panel	96	1	24	2,304
Interrupted Deliberation (ID)	192	1	6	1,152
Educational Materials	1,685	1	1	1,685
Knowledge and Attitudes Pretest Survey	1,685	1	30/60	843
Knowledge and Attitudes Post-test Survey	1,685	1	20/60	562
Deliberative Experience Survey	1,056	1	15/60	264
Total	8852	N/A	N/A	11,647

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name/deliberative method	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
Recruitment and Consent Materials	1,685	421	$21.35	$8,988
Short Citizens' Deliberation (SCD)	192	384	21.35	8,198
Online Deliberative Polling® (ODP)	288	1,440	21.35	30,744
In-Person Deliberative Polling® (IDP)	288	2,592	21.35	55,339
Citizens' Panel	96	2,304	21.35	49,190
Interrupted Deliberation (ID)	192	1,152	21.35	24,595
Educational Materials	1,685	1,685	21.35	35,975
Knowledge and Attitudes Pretest Survey	1,685	843	21.35	17,998
Knowledge and Attitudes Post-test Survey	1,685	562	21.35	11,999
Deliberative Experience Survey	1,056	264	21.35	5,636
Total	8852	N/A	N/A	$248,662

* Based upon the mean of the wages for 00–000 All Occupations ($21.35), May 2010 National Occupational Employment and Wage Estimates. United States, ''U.S. Department of Labor, Bureau of Labor Statistics.'' *http://www.bls.gov/oes/current/oes_nat.htm#00–0000*

Estimated Annual Costs to the Federal Government

Exhibit 3 below breaks down the costs related to this study. These are the costs associated with the portion of the contract awarded to AIR to conduct the experiment. Since the implementation and evaluation periods will span 24 months, the costs have been annualized by taking the total cost and dividing by 2.

EXHIBIT 3—ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Cost component	Total cost	Annualized cost
Project Management	$60,106	$30,053
Technical Expert Panel	117,793	58,896
Technology Tools	177,580	88,790
Develop Educational Materials	368,624	184,312
Evaluation Plan	214,566	107,283
Implement Methods	1,624,169	812,085
Conceptual Framework	50,195	25,098
Data Processing and Analysis	566,846	283,423
Reporting	135,693	67,847
Overhead	1,281,340	640,670
Total	$4,596,914	$2,298,457

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 3, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–3309 Filed 2–14–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–12DO]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Kimberly Lane, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

CDC National Healthy Worksite Program (NHWP)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In the United States, chronic diseases such as cancer, heart disease, and diabetes are among the leading causes of death and disability. Although chronic diseases are among the most common and costly health problems, they are also among the most preventable. Adopting healthy behaviors, such as eating nutritious foods, being physically active, and avoiding tobacco use, can prevent the devastating effects of these diseases and lead to reduced rates of obesity, cancer, heart disease, stroke, and diabetes.

Increasing health care costs, and decreases in employee productivity due to health-related factors, are leading American businesses to examine strategies to improve health and contain health care costs. Employers are recognizing the role they can play in creating a healthy work environment and providing their employees with opportunities to make healthy lifestyle choices. They increasingly look to CDC and other public health experts for guidance and solutions to combat the effects of chronic diseases on their employees and businesses.

To support these efforts, the Centers for Disease Control and Prevention (CDC) is establishing the National Healthy Worksite Program (NHWP), a comprehensive workplace health promotion program to address physical activity, nutrition, and tobacco use in the workplace. Participating worksites will create high quality workplace health programs by implementing programs, policies, and environmental supports that assist employees in adopting healthy behaviors. The NHWP is authorized by the Public Health Service Act and funded through the Prevention and Public Health Fund of the Patient Protection and Affordable Care Act (ACA).

CDC-funded NHWP support will be provided over a two-year period to an initial group of 100 worksites drawn from seven communities. The worksites will represent small, medium and large employers in a variety of industry sectors. The largest employers will be required to make an in-kind contribution to supplement the support provided through the NHWP. Support to be provided for worksites participating in the NHWP will include organizational assessment, guidance on strategies for supporting a culture of

health, assistance in implementing a tailored workplace health improvement plan, and training. Support to be provided for participating employees will include individual health risk assessments, health coaching and education, and opportunities to participate in healthy lifestyle challenges. The NHWP will also provide workplace health program training to additional employers in the seven NHWP communities. CDC may increase the number of NHWP sites that receive assistance, if funding becomes available.

CDC plans to collect information needed to select the initial group of participating NHWP worksites; to describe implementation and costs of workplace health promotion programs at these sites over the initial two-year period of support; to examine the effects of workplace health programs on employee access and opportunity to engage in activities that support a healthy lifestyle; and to quantify reductions in individual health risks and improvements in productivity. In addition, for up to one year after the two-year implementation period, CDC will collect information needed to assess program sustainability. Respondents will include employers, employees, and support staff at sites participating in the NHWP. To gain insight into training needs, barriers to participation, and other issues related to program sustainability, information will also be collected from additional employers in NHWP communities.

There are no costs to participants other than their time, with the exception of the in-kind contribution for large employers. Participation in the NHWP is voluntary for both worksites and employees at those sites.

OMB approval is requested for three years. Information will be used to evaluate the NHWP, to identify success drivers for building and maintaining a successful workplace health program, and to develop tools and resources for additional employers who are interested in establishing workplace health programs.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Employers Participating in the NHWP	Employer Interview Guide	100	1	20/60	33
	Organizational Assessment	67	2	30/60	67
	Eligibility File	32	5	15/60	40
	Discussion Guide for Steering Committee Members.	4	1	30/60	2
	Discussion Guide for Wellness Committee Members.	34	1	30/60	17
	Employer Follow Up Survey	33	1	15/60	8
Additional Community Employers	Employer Engagement Feedback Survey.	70	1	10/60	12
	Employer Follow Up Survey	166	1	15/60	42
Employees Participating in the NHWP.	All Employee Survey	3,000	2	30/60	3,000
	Health Assessment	4,000	2	30/60	4,000
	Success Story Consent and Questionnaire,.	400	1	10/60	67
	Satisfaction Survey	2,000	1	15/60	500
	Lower Your Weight by Eight Challenge Log.	2,000	1	1	2,000
	Step into Health Challenge Log	2,000	1	30/60	1,000
	Mix it Up Challenge Log	2,000	1	30/60	1,000
	Quench Your Thirst Challenge Log	2,000	1	30/60	1,000
	Feel Fit with Fiber Challenge Log	2,000	1	30/60	1,000
	Maintain Don't Gain Challenge Log	2,000	1	1	2,000
	Nutrition/Lifestyle Tracking Log	2,000	1	30/60	1,000
Total					16,788

Kimberly Lane,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2012–3489 Filed 2–14–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–0134]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Kimberly Lane, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Foreign Quarantine Regulations (42 CFR 71) (OMB Control No. 0920–0134) exp. 6/30/12)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 361 of the Public Health Service Act (PHSA)(42 U.S.C. 264) authorizes the Secretary of Health and Human Services (HHS) to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases into the United States. Legislation and existing regulations governing the foreign quarantine activities (42 CFR 71) authorize quarantine officers and other personnel to inspect and undertake necessary control measures with respect to conveyances, persons, and shipments of animals and etiologic agents entering the United States from foreign ports in order to protect the public's health.

Under the foreign quarantine regulations, the master of a ship or captain of an airplane entering the United States from a foreign port is required by public health law to report certain illnesses among passengers (42 CFR 71.21 (b)). In addition to the aforementioned list of illnesses which must be reported to CDC, the master of a ship or captain of an airplane must also report (1) Hemorrhagic Fever Syndrome (persistent fever accompanied by abnormal bleeding from any site); or (2) acute respiratory syndrome (severe cough or severe respiratory disease of less than 3 weeks in duration); or (3) acute onset of fever and severe headache, accompanied by stiff neck or change in level of consciousness. CDC has the authority to collect personal health information to protect the health of the public under the authority of section 301 of the Public Health Service Act (42 U.S.C.).

This information collection request also includes the Passenger Locator Information Form. The Passenger Locator Information Form is used to collect reliable information that assists quarantine officers in locating, in a timely manner, those passengers and crew who are exposed to communicable diseases of public health significance while traveling on a conveyance. HHS delegates authority to CDC to conduct quarantine control measures. Currently, with the exception of rodent inspections and the cruise ship sanitation program, inspections are performed only on those vessels and aircraft which report illness prior to arrival or when illness is discovered upon arrival. Other inspection agencies assist quarantine officers in public health screening of persons, pets, and other importations of public health significance and make referrals to the Public Health Service when indicated. These practices and procedures assure protection against the introduction and spread of communicable diseases into the United States with a minimum of recordkeeping and reporting as well as a minimum of interference with trade and travel.

Small revisions are being requested as part of this package. A modification of format to the Passenger Locator Form (PLF) is requested to account for a change in the scanning software used for the PLF. No change in content is requested. The content will remain identical to the version approved by OMB on 10/28/11.

Changes to the data collection related to the confinement of dogs upon arrival to the United States are also requested. The CDC form 75.37, ''Notice of Importers of Dogs'' will now be identified as CDC form 75.37 ''NOTICE TO OWNERS AND IMPORTERS OF DOGS: Requirement for Dog Confinement.'' The form has been changed to enhance clarity around the purpose of the form, including: the type of data required, the regulatory requirements the form is meeting, the responsibilities of the importer, whether or not the animal has received a booster rabies vaccine, and the responsibility of the government agent in ensuring that the form is complete.

Respondents to this data collection include airline pilots, ships' captains, importers, and travelers. The nature of the quarantine response dictates which forms are completed by whom. There are no costs to respondents except for their time to complete the forms.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondent	Citation	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)	Total burden
Maritime conveyance operators	71.21(a) Radio Report of death/illness—illness reports from ships.	2000	1	2/60	67
Aircraft commander or operators	71.21(b) Death/Illness reports from aircrafts.	1700	1	2/60	57
Maritime conveyance operators	71.21(c) Gastrointestinal Illnesses reports 24 and 4 hours before arrival (VSP).	17000	1	3/60	850
Maritime conveyance operators	71.21 (c) Recordkeeping—Medical logs.	17000	1	3/60	850
Isolated or Quarantined individuals ..	71.33(c) Report by persons in isolation or surveillance.	11	1	3/60	1
Maritime conveyance operators	71.35 Report of death/illness during stay in port.	5	1	30/60	3
Aircraft commander or operators	Locator Form used in an outbreak of public health significance.	2,700,000	1	5/60	225,000
Aircraft commander or operators	Locator Form used for reporting of an ill passenger(s).	800	1	5/60	67
Importer	71.51(b)(2) Dogs/cats: Certification of Confinement, Vaccination.	2000	1	10/60	333

ESTIMATE OF ANNUALIZED BURDEN HOURS—Continued

Respondent	Citation	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)	Total burden
Importer	71.51(b)(3) Dogs/cats: Record of sickness or deaths.	20	1	15/60	5
Importer	71.52(d) Turtle Importation Permits	5	1	30/60	3
Non-Human Primate Importer	71.53(d) Importer Registration—Nonhuman Primates.	40	1	10/60	7
Non-Human Primate Importer	71.53(e) Recordkeeping	30	4	30/60	60
Importers	71.55 Dead bodies	5	1	1	5
Importer	71.56 (a)(2) African Rodents—Request for exemption.	20	1	1	20
Importer	71.56(a)(iii) Appeal	2	1	1	2
Total		2,740,638			227,330

Kimberly S. Lane,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2012–2951 Filed 2–14–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP STAC or Advisory Committee), National Institute for Occupational Safety and Health (NIOSH)

Correction

This notice was published in the **Federal Register** on January 31, 2012, Volume 77, Number 20, pages 4820–4821. The meeting times and public comment times should read as follows:

Committee Public Meeting Times and Dates: (All times are Eastern Standard Time).

12 p.m.–5 p.m., February 15, 2012, and
8:30 a.m.–4:00 p.m., February 16, 2012.

Public Comment Times and Dates: (All times are Eastern Standard Time.)

3:45 p.m.–4:45 p.m., on February 15, 2012, and
8:45 a.m.–10:45 a.m., on February 16, 2012.

Contact Person for More Information: Paul J. Middendorf, Ph.D., Designated Federal Officer, NIOSH, CDC, 4676 Columbia Parkway, Mail Stop R–45, Cincinnati, Ohio 45226, Telephone: 1 (888) 982–4748; email: *wtc-stac@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: February 8, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–3487 Filed 2–14–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis (ACET)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates:

8:30 a.m.–5:30 p.m., March 6, 2012.
8:30 a.m.–2:30 p.m., March 7, 2012.

Place: CDC, Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333, telephone: (404) 639–8317.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Agenda items include the following topics: (1) Tuberculosis issues in special populations; (2) United States-Mexico border activities update; (3) tuberculosis outbreaks in federal prisons update; (4) ACET Workgroups Activities Updates; and (5) other tuberculosis-related issues. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Margie Scott-Cseh, Centers for Disease Control and Prevention, 1600 Clifton Road NE., M/S E–07, Atlanta, Georgia 30333, telephone: (404) 639–8317.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 8, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–3486 Filed 2–14–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

ICD–9–CM Coordination and Maintenance (C&M) Committee Meeting

National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff, announces the following meeting.

Name: ICD–9–CM Coordination and Maintenance (C&M) Committee meeting.

Time and Date: 9 a.m.–5:30 p.m., March 5, 2012.

Place: Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

Status: Open to the public, limited only by the space available. The meeting

room accommodates approximately 240 people.

Security Considerations: Due to increased security requirements CMS has instituted stringent procedures for entrance into the building by non-government employees. Attendees will need to present valid government-issued picture identification, and sign-in at the security desk upon entering the building. Attendees who wish to attend the ICD–9–CM C&M meeting on March 5, 2012, must submit their name and organization by February 27, 2012, for inclusion on the visitor list. This visitor list will be maintained at the front desk of the CMS building and used by the guards to admit visitors to the meeting.

Participants who attended previous ICD–9–CM C&M meetings will no longer be automatically added to the visitor list. You must request inclusion of your name prior to each meeting you attend.

Please register to attend the meeting on-line at: *http://www.cms.hhs.gov/apps/events/*.

Please contact Mady Hue (410–786–4510 or *Marilu.hue@cms.hhs.gov*), for questions about the registration process.

Purpose: The ICD–9–CM Coordination and Maintenance Committee is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

Matters to be Discussed: Tentative agenda items include:

March 5, 2012

ICD–9–CM Procedure Topics:
Administration of Fidaxomicin
Placement of Modeling Catheter in Endovascular Graft Procedure
Injection or Infusion of Glucarpidase

ICD–10 Updates:
ICD–10 MS–DRG Update
ICD–10 HAC Translation List
Impact of ICD–10 MS–DRGs
Implementation

ICD–10–CM Diagnosis Topics:
Atypical femoral fracture
Choking ''game''
Cognitive sequelae of cerebrovascular disease
Family history of SIDS

Addenda

Agenda items are subject to change as priorities dictate.

Note: CMS and NCHS will no longer provide paper copies of handouts for the meeting. Electronic copies of all meeting materials will be posted on the CMS and NCHS Web sites prior to the meeting at *http://www.cms.hhs.gov/ICD9ProviderDiagnosticCodes/03_meetings.asp#TopOfPage* and *http://www.cdc.gov/nchs/icd/icd9cm_maintenance.htm.*

Contact Persons for Additional Information: Donna Pickett, Medical Systems Administrator, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road, Room 2337, Hyattsville, Maryland 20782, email *dfp4@cdc.gov*, telephone 301–458–4434 (diagnosis); Mady Hue, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Boulevard, Baltimore, Maryland 21244, email *marilu.hue@cms.hhs.gov*, telephone 410–786–4510 (procedures).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: February 8, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–3484 Filed 2–14–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

Correction

This notice was published in the **Federal Register** on February 1, 2012, Volume 77, Number 21, Page 5026. The matters to be discussed and times should read as follows:

Matters To Be Discussed: The agenda will include discussions on: meningococcal vaccine, hepatitis B vaccine, tetanus, diphtheria, and acellular pertussis (Tdap) vaccine, influenza, vaccine supply, 13-valent pneumococcal conjugate vaccine, and measles-mumps-rubella (MMR) vaccine. Recommendation vote is scheduled for Tdap vaccine. Time will be available for public comment.

Agenda items are subject to change as priorities dictate.

Times and Dates:

8 a.m.–5 p.m., February 22, 2012.
8 a.m.–12:30 p.m., February 23, 2012.

The Meeting is Web cast live via the World Wide Web; for instructions and more information on ACIP please visit the ACIP Web site: *http://www.cdc.gov/vaccines/recs/acip/*.

Contact Person for More Information: Stephanie B. Thomas, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road NE., MS–A27, Atlanta, Georgia 30333, telephone: (404)639–8836; Email *ACIP@CDC.GOV*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 8, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–3481 Filed 2–14–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Tracking of Participants in the Head Start Impact Study.

OMB No.: 0970–0229.

Description: The Administration for Children and Families (ACF) within the Department of Health and Human Services (HHS) will collect follow-up information from children and families in the Head Start Impact Study. In anticipation of conducting a future follow-up for the study, ACF will collect information necessary to identify respondents' current location and follow-up with respondents in the future.

The Head Start Impact Study is a longitudinal study involving 4,667 first time enrolled three- and four-year-old preschool children across 84 nationally representative grantee/delegate agencies. Participants have been randomly assigned to either a Head Start group or a control group. Data collection for the study began in fall of 2002 and has been extended through late spring 2008 to include the participants' 3rd grade year. Tracking of the participants has continued every spring beginning in 2009 and ending in 2011.

ACF will continue to examine outcomes for the sample through the spring of the participant's 12th grade year. To maintain adequate sample size, telephone interviews will be conducted in order to update the respondent's location and contact information. This information will be collected from

parents or guardians in the spring of 2012, 2013, 2014 2015, and 2016. This request package covers three years of information collection, from 2012 to 2014.

Respondents: The original sample of 4,667 treatment and control group members in the Head Start Impact Study, minus 432 families that have refused to participate in the study.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Parent Tracking Interview	4235	1	⅓	1412

Estimated Total Annual Burden Hours: 1412.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: February 9, 2012.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. 2012–3476 Filed 2–14–12; 8:45 am]

BILLING CODE 4184–22–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0115]

Agency Information Collection Activities; Proposed Collection; Comment Request: Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information concerning class II special controls for an automated blood cell separator device operating by centrifugal or filtration separation principle.

DATES: Submit either electronic or written comments on the collection of information by April 16, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7726, *Ila.Mizrachi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle (OMB Control Number 0910–0594)—Extension

Under the Safe Medical Devices Act of 1990 (Pub. L. 101–629), FDA may establish special controls, including performance standards, postmarket surveillance, patient registries, guidelines, and other appropriate actions it believes necessary to provide reasonable assurance of the safety and effectiveness of the device.

The special control guidance serves to support the reclassification from class III to class II of the automated blood cell separator device operating on a centrifugal separation principle intended for the routine collection of blood and blood components as well as

the special control for the automated blood cell separator device operating on a filtration separation principle intended for the routine collection of blood and blood components reclassified as class II (§ 864.9245 (21 CFR 864.9245)).

For currently marketed products not approved under the premarket approval process, the manufacturer should file with FDA for 3 consecutive years an annual report on the anniversary date of the device reclassification from class III to class II or, on the anniversary date of the 510(k) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360) clearance. Any subsequent change to the device requiring the submission of a premarket notification in accordance with section 510(k) of the FD&C Act should be included in the annual report. Also, a manufacturer of a device determined to be substantially equivalent to the centrifugal or filtration-based automated cell separator device intended for the routine collection of blood and blood components, should comply with the same general and special controls.

The annual report should include, at a minimum, a summary of anticipated and unanticipated adverse events that have occurred and that are not required to be reported by manufacturers under Medical Device Reporting (MDR) (part 803 (21 CFR part 803)). The reporting of adverse device events summarized in an annual report will alert FDA to trends or clusters of events that might be a safety issue otherwise unreported under the MDR regulation.

Reclassification of this device from class III to class II for the intended use of routine collection of blood and blood components relieves manufacturers of the burden of complying with the premarket approval requirements of section 515 of the FD&C Act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by reducing the burden. Although the special control guidance recommends that manufacturers of these devices file with FDA an annual report for 3 consecutive years, this would be less burdensome than the current postapproval requirements under part 814, subpart E (21 CFR part 814, subpart E), including the submission of periodic reports under § 814.84.

Collecting or transfusing facilities, and manufacturers have certain responsibilities under the Federal regulations. For example, collecting or transfusing facilities are required to maintain records of any reports of complaints of adverse reactions (21 CFR 606.170), while the manufacturer is responsible for conducting an investigation of each event that is reasonably known to the manufacturer and evaluating the cause of the event (§ 803.50(b)). In addition, manufacturers of medical devices are required to submit to FDA individual adverse event reports of death, serious injury, and malfunctions (§ 803.50).

In the special control guidance document, FDA recommends that manufacturers include in their three annual reports a summary of adverse reactions maintained by the collecting or transfusing facility or similar reports of adverse events collected in addition to those required under the MDR regulation. The MedWatch medical device reporting code instructions (*http://www.fda.gov/cdrh/mdr/373.html*) contains a comprehensive list of adverse events associated with device use, including most of those events that we recommend summarizing in the annual report.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Reporting activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Annual Report	4	1	4	5	20

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA records, there are approximately four manufactures of automated blood cell separator devices. We estimate that the manufacturers will spend approximately 5 hours preparing and submitting the annual report.

Other burden hours required for § 864.9245 are reported and approved under OMB control number 0910–0120 (premarket notification submission 501(k), 21 CFR part 807, subpart E), and OMB control number 0910–0437 (MDR, 21 CFR part 803).

Dated: February 9, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–3551 Filed 2–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1029]

Agency Information Collection Activities; Proposed Collection; Comment Request; General Licensing Provisions; Section 351(k) Biosimilar Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection for the requirements for an application for a proposed biosimilar product and an application for a supplement for a proposed interchangeable product.

DATES: Submit either electronic or written comments on the collection of information by April 16, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane., Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr.,

PI50–400B, Rockville, MD 20850, 301–796–7651.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

General Licensing Provisions; Section 351(K) Biosimilar Applications

On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act (Affordable Care Act) (Pub. L. 111–148). The Affordable Care Act contains a subtitle called the Biologics Price Competition and Innovation Act of 2009 (BPCI Act) which amends the Public Health Service Act (PHS Act) and establishes an abbreviated licensure pathway for biological products shown to be biosimilar to, or interchangeable with, an FDA-licensed biological reference product. (See sections 7001 through 7003 of the Affordable Care Act.)

Section 351(k) of the PHS Act (42 U.S.C. 262(k)), added by the BPCI Act, sets forth the requirements for an application for a proposed biosimilar product and an application for a supplement for a proposed interchangeable product. Section 351(k) defines biosimilarity to mean ''that the biological product is highly similar to the reference product notwithstanding minor differences in clinically inactive components'' and that ''there are no clinically meaningful differences between the biological product and the reference product in terms of the safety, purity, and potency of the product''. (See section 351(i)(2) of the PHS Act.) A 351(k) application must contain, among other things, information demonstrating that the biological product is biosimilar to a reference product based upon data derived from analytical studies, animal studies, and clinical studies, unless FDA determines, in its discretion, that certain studies are unnecessary in a 351(k) application. (See section 351(k)(2).) To demonstrate interchangeability, an applicant must provide sufficient information to demonstrate biosimilarity, and that the biosimilar biological product can be expected to produce the same clinical result as the reference product in any given patient and, if the biosimilar biological product is administered more than once to an individual, the risk in terms of safety or diminished efficacy of alternating or switching between the use of the biosimilar biological product and the reference product is not greater than the risk of using the reference product without such alternation or switch. (See section 351(k)(4) of the PHS Act.) Interchangeable products may be substituted for the reference product without the intervention of the prescribing healthcare provider. (See section 351(i)(3) of the PHS Act.) This **Federal Register** information collection document begins the process of requesting public comment and obtaining OMB approval for the information collection regarding the burden on the submission of a 351(k) application not otherwise covered by existing OMB approvals.

In estimating the information collection burden for 351(k) applications, FDA has reviewed the collection of information regarding the general licensing provisions for biologics license applications (BLAs) under section 351(a) of the PHS Act to OMB (approved under OMB control number 0910–0338). For the information collection burden for 351(a) applications, FDA described § 601.2(a) (21 CFR 601.2(a)) as requiring a manufacturer of a biological product to submit an application on forms prescribed for such purpose with accompanying data and information including certain labeling information to FDA for approval to market a product in interstate commerce. FDA also added in the burden estimate the container and package labeling requirements provided under §§ 610.60 through 610.65 (21 CFR 610.60 through 610.65). The estimated hours per response for § 601.2, and §§ 610.60 through 610.65, were 860 hours.

In addition, in submitting a 351(a) application, an applicant completes the Form FDA 356h ''Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use.'' The application form serves primarily as a checklist for firms to gather and submit certain information to FDA. The checklist helps to ensure that the application is complete and contains all the necessary information, so that delays due to lack of information may be eliminated. The form provides key information to FDA for efficient handling and distribution to the appropriate staff for review. The estimated burden hours for biological product submissions using FDA Form 356h are included under the applicable requirements approved under OMB control number 0910–0338.

FDA intends for an applicant to submit a 351(k) application following Form FDA 356h, modifying the information submitted to support the information required under section 351(k) of the BPCI Act. To submit an application seeking licensure of a proposed biosimilar product under section 351(k)(2)(A)(i) and (k)(2)(A)(iii), FDA believes that the estimated burden hours would be approximately the same as noted under OMB control number 0910–0338 for a 351(a) application—860 hours. The burden estimates for seeking licensure of a proposed biosimilar product that meets the standards for interchangeability under section 351(k)(2)(B) and (k)(4) would also be 860 hours. Until we gain more experience with biosimilar applications, FDA believes this estimate is appropriate for 351(k) applications because to determine biosimilarity or interchangeability of a proposed 351(k) product, the application and the information submitted is expected to be comparably complex and technically demanding as a proposed 351(a) application. FDA may determine, in its discretion, that an element required under a 351(k) application to be unnecessary to support licensure of a biosimilar or interchangeable product. In those cases, the number of hours per response may be less than the hours estimated.

A summary of the collection of information requirements in the submission of a 351(k) application as described under the BPCI Act follows:

Section 351(k)(2)(A)(i) requires manufactures of 351(k) products to

submit an application for FDA review and licensure before marketing a biosimilar product. An application submitted under this section shall include information demonstrating that:

- The biological product is biosimilar to a reference product based upon data derived from analytical studies, animal studies (including toxicity) and a clinical study or studies (including immunogenicity and pharmacokinetics or pharmacodynamics). The Secretary of Health and Human Services (the Secretary) may determine that any of these elements is unnecessary.
- The biological product and reference product utilize the same mechanism or mechanisms of action for the condition or conditions of use prescribed, recommended, or suggested in the proposed labeling, but only to the extent the mechanism or mechanisms of action are known for the reference product.
- The condition or conditions of use prescribed, recommended, or suggested in the labeling proposed for the biological product have been previously approved for the reference product.
- The route of administration, the dosage form, and the strength of the biological product are the same as those of the reference product.
- The facility in which the biological product is manufactured, processed, packed, or held meets standards designed to assure that the biological product continues to be safe, pure, and potent.

Section 351(k)(2)(A)(iii) requires the application to include publicly-available information regarding the Secretary's previous determination that the reference product is safe, pure, and potent. The application may include any additional information in support of the application, including publicly-available information with respect to the reference product or another biological product.

Under section 351(k)(2)(B) and (k)(4), a manufacturer may include information demonstrating that the biological product meets the standards for interchangeability either in the application described above to show biosimilarity, or in a supplement to such an application. The information submitted to meet the standard for interchangeability must show that: (1) The biological product is biosimilar to the reference product and can be expected to produce the same clinical result as the reference product in any given patient and (2) for a biological product that is administered more than once to an individual, the risk in terms of safety or diminished efficacy of alternating or switching between use of the biological product and the reference product is not greater than the risk of using the reference product without such alternation or switch.

In addition to the collection of information regarding the submission of a 351(k) application for a proposed biosimilar or interchangeable biological product, section 351(l) of the BPCI Act establishes procedures for identifying and resolving patent disputes involving applications submitted under section 351(k) of the PHS Act. The burden estimates for the patent provisions under section 351(l)(6)(C) of the BPCI Act are included in table 1 of this document and are based on the estimated number of 351(k) biosimilar respondents. Based on similar reporting requirements, FDA estimates this notification will take 2 hours. A summary of the collection of information requirements under 351(l)(6)(C) follows:

Not later than 30 days after a complaint from the reference product sponsor is served to a 351(k) applicant in an action for patent infringement described under 351(l)(6), section 351(l)(6)(C) requires that the 351(k) applicant provide the Secretary with notice and a copy of such complaint. The Secretary shall publish in the **Federal Register** notice any complaint received under 351(l)(6)(C)(i).

FDA has not received any 351(k) applications to date. Under table 1 of this document, the estimated number of respondents submitting 351(k) applications is based on the estimated annual number of manufacturers that would submit the required information to FDA and the estimated annual number of 351(k) submissions FDA would receive. In making this estimate, FDA has taken into account, among other things, the expiration dates of patents that relate to potential reference products, and general market interest in biological products that could be candidates for 351(k) applications.

On November 2 and 3, 2010, FDA held a public hearing and established a public docket to obtain input on specific issues and challenges associated with the implementation of the BPCI Act. (See Docket No. FDA–2010–N–0477.) Based in part on this input, FDA is announcing elsewhere in this issue of the **Federal Register**, the availability of three draft guidances describing FDA's current interpretation of certain statutory requirements added by the BPCI Act as well as quality and analytical issues, demonstrating biosimilarity, and implementation policy issues. These draft guidances are: ''Biosimilars: Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009,'' ''Quality Considerations in Demonstrating Biosimilarity to a Reference Protein Product,'' and ''Scientific Considerations in Demonstrating Biosimilarity to a Reference Product.'' The **Federal Register** documents for these guidances reference this **Federal Register** information collection document regarding the burden on the submission of a 351(k) application not otherwise covered by existing OMB approvals. In addition, we note that the draft guidance on ''Scientific Considerations in Demonstrating Biosimilarity to a Reference Product'' recommends that labeling for a product subject to approval under section 351(k) include statements that indicate that: (1) The product is approved as biosimilar to a reference product for stated indication(s) and (2) the product (has or has not) been determined to be interchangeable with the reference product. FDA has determined, under 5 CFR 1320.3(c)(2)), that these labeling recommendations are not ''collections of information'' for the purposes of the PRA because the statements will comprise solely information that FDA will supply to the applicant for the purpose of disclosing it to the public, i.e. FDA's determination upon review of the application submitted under section 351(k), that the product is biosimilar and/or interchangeable to its reference product.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

351(k) Application for biosimilars (42 U.S.C. 262(k))	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
351(k)(2)(A)(i) and (k)(2)(A)(iii)	2	1	2	860	1720
351(k)(2)(B) and (k)(4)	1	1	1	860	860

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

351(k) Application for biosimilars (42 U.S.C. 262(k))	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
351(l)(6)(C)	2	1	2	2	4

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 9, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–3548 Filed 2–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0605]

Draft Guidance for Industry on Scientific Considerations in Demonstrating Biosimilarity to a Reference Product; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Scientific Considerations in Demonstrating Biosimilarity to a Reference Product.'' This draft guidance is intended to assist sponsors in demonstrating that a proposed therapeutic protein product is biosimilar to a reference product for the purpose of submitting a marketing application through an abbreviated licensure pathway. This draft guidance gives an overview of FDA's approach to determining biosimilarity.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 16, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sandra Benton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6340, Silver Spring, MD 20993–0002, 301–796–1042; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Scientific Considerations in Demonstrating Biosimilarity to a Reference Product.'' This draft guidance is intended to assist sponsors in demonstrating that a proposed therapeutic protein product is ''biosimilar'' [1] to a reference product for the purpose of submitting a marketing application through the abbreviated licensure pathway under section 351(k) of the Public Health Service Act (PHS Act) (42 U.S.C. 262(k)).

The Biologics Price Competition and Innovation Act of 2009, enacted as part of the Affordable Care Act (Pub. L. 111–148) on March 23, 2010, created an abbreviated licensure pathway under section 351(k) of the PHS Act for biological products demonstrated to be biosimilar to, or interchangeable with, a reference product. Under this abbreviated licensure pathway, FDA will license a proposed biological product submitted under section 351(k) of the PHS Act if FDA ''determines that the information submitted in the application * * * is sufficient to show that the biological product is biosimilar to the reference product * * *'' and the 351(k) applicant (or other appropriate person) consents to an inspection of the facility that is the subject of the application (i.e., a facility in which the proposed biological product is manufactured, processed, packed, or held).[2] The draft guidance gives an overview of FDA's approach to determining biosimilarity. FDA intends to consider the totality of the evidence submitted in a 351(k) application and is recommending that sponsors use a stepwise approach in their development of biosimilar products. The draft guidance discusses important scientific considerations in demonstrating biosimilarity, including:

- A stepwise approach to demonstrating biosimilarity, which can include a comparison of the proposed therapeutic protein product and the reference product with respect to structure, function, animal toxicity, human pharmacokinetics and pharmacodynamics, clinical immunogenicity, and clinical safety and effectiveness;
- The totality-of-the-evidence approach that FDA will use to review applications for biosimilar products; and
- General scientific principles in conducting comparative structural and functional analysis, animal testing, human pharmacokinetics and pharmacodynamics studies, clinical immunogenicity assessment, and clinical safety and effectiveness studies (including clinical study design issues).

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on scientific considerations in demonstrating biosimilarity to a reference product. It does not create or confer any rights for or on any person

[1] In section 7002(b)(3) of the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148, ''biosimilar'' or ''biosimilarity'' means ''that the biological product is highly similar to the reference product notwithstanding minor differences in clinically inactive components,'' and that ''there are no clinically meaningful differences between the biological product and the reference product in terms of the safety, purity, and potency of the product.''

[2] Section 7002(a)(2) of the Affordable Care Act, adding section 351(k)(3) of the PHS Act (citing section 351(a)(2)(C) of the PHS Act).

and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. The Paperwork Reduction Act

This draft guidance describes information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). In particular, the draft guidance refers to information collections related to the submission of 351(k) application. In accordance with the PRA, FDA is soliciting public comment, in a separate document published elsewhere in this issue of the **Federal Register** (see ''Agency Information Collection Activities: Proposed Collection; Comment Request; General Licensing Provisions; Section 351(k) Biosimilar Applications'') on the information collection associated with the submission of a 351(k) application. FDA will also seek OMB approval for this information collection.

In addition, this draft guidance references other information collections that are already approved by OMB and are not expected to change as a result of the draft guidance. This includes information collections related to the submission of (1) an investigational new drug application, which is covered under 21 CFR part 312 and approved under OMB control number 0910–0014; (2) a new drug application, which is covered under 21 CFR 314.50 and approved under OMB control number 0910–0001; (3) a biologics license application, which is covered under 21 CFR part 601 and approved under OMB control number 0910–0338; and (4) labeling, which is covered under 21 CFR 201.57 and approved under OMB control number 0910–0572.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatory Information/default.htm,* or *http://www.regulations.gov*.

Dated: February 9, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–3552 Filed 2–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0602]

Draft Guidance for Industry on Quality Considerations in Demonstrating Biosimilarity to a Reference Protein Product; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Quality Considerations in Demonstrating Biosimilarity to a Reference Protein Product.'' This draft guidance is intended to provide sponsors with an overview of analytical factors to consider when assessing biosimilarity between a proposed protein product and a reference product for the purpose of submitting a marketing application through an abbreviated licensure pathway. This draft guidance provides an overview of FDA's approach to quality considerations in determining biosimilarity.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 16, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002, or Office of Communication, Outreach, and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sandra Benton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6340, Silver Spring, MD 20993–0002, 301–796–1042, or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Quality Considerations in Demonstrating Biosimilarity to a Reference Protein Product.'' This draft guidance is intended to provide sponsors with an overview of analytical factors to consider when assessing biosimilarity between a proposed protein product and a reference product for the purpose of submitting a marketing application through the abbreviated licensure pathway under section 351(k) of the Public Health Service Act (PHS Act) (42 U.S.C. 262(k)). Although the 351(k) pathway applies generally to biological products, this draft guidance focuses on therapeutic protein products.

The Biologics Price Competition and Innovation Act of 2009, enacted as part of the Patient Protection and Affordable Care Act (Affordable Care Act) (Pub. L. 111–148) on March 23, 2010, created an abbreviated licensure pathway under section 351(k) of the PHS Act for biological products demonstrated to be biosimilar to, or interchangeable with, a reference product. Under this abbreviated licensure pathway, FDA will license a proposed biological product submitted under section 351(k) of the PHS Act if FDA ''determines that the information submitted in the application * * * is sufficient to show that the biological product is biosimilar to the reference product * * *'' and the 351(k) applicant (or other appropriate person) consents to an inspection of the facility that is the subject of the application (i.e., a facility in which the proposed biological product is

manufactured, processed, packed, or held).[1]

All product applications should contain a complete and thorough Chemistry, Manufacturing, and Controls (CMC) section that provides the necessary and appropriate information (*e.g.,* characterization, adventitious agent safety, process controls, and specifications) for the product to be adequately reviewed.[2] This draft guidance describes important factors for consideration when assessing whether therapeutic protein products are highly similar, including:

- Expression System
- Manufacturing Process
- Assessment of Physiochemical Properties
- Functional Activities
- Receptor Binding and Immunochemical Properties
- Impurities
- Reference Product and Reference Standards
- Finished Drug Product
- Stability

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on quality considerations in demonstrating biosimilarity to a reference protein product. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act

This draft guidance describes information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). In particular, the draft guidance refers to information collections related to the submission of a 351(k) application. In accordance with the PRA, FDA is soliciting public comment, in a separate document published elsewhere in this issue of the **Federal Register** (see ''Agency Information Collection Activities; Proposed Collection; Comment Request; General Licensing Provisions; Section 351(k) Biosimilar Applications'') on the information collection associated with the submission of a 351(k) application. FDA will also seek OMB approval for this information collection.

In addition, this draft guidance references other information collections that are already approved by OMB and are not expected to change as a result of the draft guidance. This includes information collections related to the submission of (1) an investigational new drug application which is covered under 21 CFR part 312 and approved under OMB control number 0910–0014; (2) a new drug application which is covered under 21 CFR 314.50 and approved under OMB control number 0910–0001; and (3) a biologics license application which is covered under 21 CFR part 601 and approved under OMB control number 0910–0338.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceCompliance RegulatoryInformation/default.htm,* or *http://www.regulations.gov.*

Dated: February 9, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–3550 Filed 2–14–12; 8:45 am]

BILLING CODE 4160–01–P

[1] Section 7002(a)(2) of the Affordable Care Act, adding section 351(k)(3) of the PHS Act (citing section 351(a)(2)(C) of the PHS Act).

[2] For CMC requirements for submission of a marketing application, applicants should consult current regulations, the *Guidance for Industry for the Submission on Chemistry, Manufacturing, and Controls Information for a Therapeutic Recombinant DNA-Derived Product or a Monoclonal Antibody Product for In-vivo Use* (issued jointly by CBER and CDER, August 1996), and other applicable FDA guidance documents.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0611]

Draft Guidance for Industry on Biosimilars: Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Biosimilars: Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009.'' This draft guidance is intended to provide answers to common questions from sponsors interested in developing proposed biosimilar products, biologics license application (BLA) holders, and other interested parties regarding FDA's interpretation of the Biologics Price Competition and Innovation Act of 2009 (BPCI Act).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 16, 2012. Submit either electronic or written comments on the proposed collection of information by April 16, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sandra Benton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6340, Silver Spring, MD 20993–0002, 301–796–1042; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Biosimilars: Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009.'' This draft guidance provides answers to common questions from sponsors interested in developing proposed biosimilar products, BLA holders, and other interested parties regarding FDA's interpretation of the BPCI Act.

The BPCI Act, enacted as part of the Patient Protection and Affordable Care Act (Pub. L. 111–148) on March 23, 2010, created an abbreviated licensure pathway under section 351(k) of the Public Health Service Act (42 U.S.C. 262(k)) for biological products demonstrated to be biosimilar to, or interchangeable with, an FDA-licensed biological reference product. This draft guidance describes FDA's current interpretation of certain statutory requirements added by the BPCI Act and includes questions and answers (Q&As) in the following categories:

- Biosimilarity or Interchangeability
- Provisions Related to Requirement to Submit a BLA for a ''Biological Product''
- Exclusivity

The Q&A format is intended to promote transparency and facilitate development programs for proposed biosimilar products by addressing questions that may arise in the early stages of development. In addition, these Q&As respond to questions the Agency has received from prospective BLA and new drug application (NDA) applicants regarding the appropriate statutory authority under which certain products will be regulated.

FDA intends to update this guidance to include additional Q&As as appropriate and intends to post information by Q&A number on FDA's Web site regarding the publication date of draft guidance Q&As for comment, the comment period, and the publication date of final guidance Q&As.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. The Paperwork Reduction Act

This draft guidance describes information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (the PRA) (44 U.S.C. 3501–3520). In particular, the draft guidance refers to information collections related to the submission of a 351(k) application. In accordance with the PRA, FDA is soliciting public comment, in a separate document published elsewhere in this issue of the **Federal Register** (see ''Agency Information Collection Activities; Proposed Collection; Comment Request; General Licensing Provisions; Section 351(k) Biosimilar Applications'') on the information collection associated with the submission of a 351(k) application. FDA will also seek OMB approval for this information collection.

In addition, this draft guidance references other information collections that are already approved by OMB and are not expected to change as a result of the draft guidance. This includes information collections related to the submission of (1) an investigational NDA, which is covered under 21 CFR part 312 and approved under OMB control number 0910–0014; (2) an NDA, which is covered under 21 CFR 314.50 and approved under OMB control number 0910–0001; (3) a biologics license application, which is covered under 21 CFR part 601 and approved under OMB control number 0910–0338; and (4) labeling, which is covered under 21 CFR 201.57 and approved under OMB control number 0910–0572.

The draft guidance also discusses the retention of reserve samples of the biological products used in comparative clinical pharmacokinetic and/or pharmacodynamic studies intended to support a proposed 351(k) application. Such reserve samples are samples of products or other physical objects exempt under 5 CFR 1320.3(h)(2), and thus not considered ''information'' as that term is defined under the PRA.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm*, *http://www.fda.gov/BiologicsBloodVaccines/GuidanceCompliance RegulatoryInformation/default.htm*, or *http://www.regulations.gov*.

Dated: *February 9, 2012.*

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–3549 Filed 2–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Food and Drug Administration Clinical Trial Requirements, Regulations, Compliance, and Good Clinical Practice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) Detroit District Office, in co-sponsorship with the Society of Clinical Research Associates (SoCRA) is announcing a public workshop. The public workshop on FDA's clinical trial requirements is designed to aid the clinical research professional's understanding of the mission, responsibilities, and authority of FDA and to facilitate interaction with FDA representatives. The program will focus on the relationships among FDA and clinical trial staff, investigators, and institutional review boards (IRB). Individual FDA representatives will discuss the informed consent process and informed consent documents; regulations relating to drugs, devices, and biologics; as well as inspections of clinical investigators, IRB, and research sponsors.

Date and Time: The public workshop will be held on May 9 and 10, 2012, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Marriott Ann Arbor Ypsilanti at Eagle Crest, 1275 S. Huron St., Ypsilanti, MI 48197, 800–606–7044.

Contact: Society of Clinical Research Associates (SoCRA), 530 West Butler Ave., Suite 109, Chalfont, PA 18914, 1–800–762–7292 or 215–822–8644, FAX: 215–822–8633, email: *SoCRAmail@aol.com,* Web site: *http://www.SoCRA.org.* (FDA has verified the Web site addresses throughout this document, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.); or Nancy Bellamy, Food and Drug Administration, Detroit District Office, 300 River Pl., Suite 5900, Detroit, MI 48207, 313–393–8143, Fax: 313–393–8139, email: *nancy.bellamy@fda.hhs.gov.*

Accommodations: Attendees are responsible for their own accommodations. Please mention SoCRA to receive the hotel room rate of $119 plus applicable taxes (available until April 17, 2012 or until the SoCRA room block is filled).

COST OF REGISTRATION

SoCRA member	$575
SoCRA nonmember (includes membership)	650
Federal Government member	450
Federal Government non-member	525
FDA Employee	*

* (Free) Fee Waived.

If you need special accommodations due to a disability, please contact SoCRA (see *Contact*) at least 21 days in advance. Extended periods of question and answer and discussion have been included in the program schedule. SoCRA designates this educational activity for a maximum of 13.3 Continuing Education Credits for SoCRA CE and Nurse CNE. SoCRA designates this live activity for a maximum of 13.3 AMA PRA Category 1 Credit(s)™. Physicians should claim only the credit commensurate with the extent of their participation. CME for Physicians: SoCRA is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education for physicians. CNE for Nurses: SoCRA is an approved provider of continuing nursing education by the Pennsylvania State Nurses Association (PSNA), an accredited approver by the American Nurses Credentialing Center's Commission on Accreditation (ANCC). ANCC/PSNA Provider Reference Number: 205–3–A–09.

Registration Instructions: To register, please submit a registration form with your name, affiliation, mailing address, telephone, fax number, and email, along with a check or money order payable to ''SoCRA''. Mail to: SoCRA (see *Contact* for address). To register via the Internet, go to *http://www.socra.org/html/FDA_Conference.htm.* Payment by major credit card is accepted (Visa/MasterCard/AMEX only). For more information on the meeting registration, or for questions on the workshop, contact SoCRA (see *Contact*).

SUPPLEMENTARY INFORMATION: The public workshop helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health. The workshop will provide those engaged in FDA-regulated (human) clinical trials with information on a number of topics concerning FDA requirements related to informed consent, clinical investigation requirements, IRB inspections, electronic record requirements, and investigator initiated research. Topics for discussion include the following: (1) What FDA Expects in a Pharmaceutical Clinical Trial; (2) Adverse Event Reporting—Science, Regulation, Error, and Safety; (3) Part 11 Compliance—Electronic Signatures; (4) Informed Consent Regulations; (5) IRB Regulations and FDA Inspections; (6) Keeping Informed and Working Together; (7) FDA Conduct of Clinical Investigator Inspections; (8) Meetings With FDA: Why, When, and How; (9) Investigator Initiated Research; (10) Medical Device Aspects of Clinical Research; (11) Working With FDA's Center for Biologics Evaluation and Research; (12) The Inspection is Over—What Happens Next? Possible FDA Compliance Actions; (13) Ethical Issues in Subject Enrollment; (14) Medical Device Aspects of Clinical Research; (15) Are We There Yet? An Overview of the FDA GCP Program.

FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices. The public workshop helps to achieve objectives set forth in section 406 of the FDA Modernization Act of 1997 (21 U.S.C. 393) which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The public workshop also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) as outreach activities by Government Agencies to small businesses.

Dated: February 9, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–3553 Filed 2–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. App), the Director, National Institutes of Health (NIH), announces the establishment of the National Center for Advancing Translational Sciences Advisory Council (Council) and the Cures Acceleration Network Review Board (Board), in the National Center for Advancing Translation Sciences (NCATS).

The Council will advise, assist, consult with, and make recommendations to the Secretary of Health and Human Services (Secretary), the Director, National Institutes of Health (NIH) and the Director, National Center for Advancing Translational Sciences (NCATS, also referred to as Center) on matters related to the activities carried out by and through the Center and the policies respecting these activities.

The Board will advise, and provide recommendation to, the Director, NCATS, with respect to (1) policies, programs, and procedures for carrying out the duties of the Director, NCATS, under section 480 of the PHS Act; and (2) significant barriers to successful translation of basic science into clinical application (including issues under the purview of other agencies and departments).

Duration of each committee is two years from the date the Charter is filed.

Dated: February 7, 2012.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2012–3572 Filed 2–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Outcome of Cochlear Implants.

Date: March 1, 2012.

Time: 9 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; H & B Small Grants.

Date: March 7, 2012.

Time: 12 p.m. to 3 p.m..

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd. Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D. Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders; Special Emphasis Panel; R03–VSL.

Date: March 8, 2012.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christine A. Livingston, Ph.D., Scientific Review Officer Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892 (301) 496–8683, *livingsc@mail.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; R03 Chemosensory.

Date: March 9, 2012.

Time: 11 a.m. to 1 p.m..

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Clinical Trial Review.

Date: March 13, 2012.

Time: 11 a.m. to 1 p.m..

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christine A. Livingston, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/groups/sep/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 9, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–3569 Filed 2–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, Clinical Trial Review.

Date: February 21, 2012.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Christine A. Livingston, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683 *livingsc@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/groups/sep/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 9, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–3544 Filed 2–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Systems Neuroscience.

Date: February 29–March 1, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Edwin C Clayton, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. 301–408–9041, *claytone@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Chemosensory, Pain and Hearing.

Date: March 1–2, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Risk, Prevention, and Health Behavior.

Date: March 1–2, 2012.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301–496–0726, *prenticekj@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Genes, Genomes and Genetics.

Date: March 1–6, 2012.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817.

Contact Person: Dominique Lorang-Leins, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5108, MSC 7766, Bethesda, MD 20892, 301–435–2204, *Lorangd@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neuroengineering and Neurogenetics.

Date: March 2, 2012.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biobehavioral and Behavioral Processes Across the Lifespan.

Date: March 5, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Marina del Rey, 4375 Admiralty Way, Marina del Rey, CA 90292.

Contact Person: Mark Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–435–0913, *mark.lindner@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Developmental Pharmacology.

Date: March 6–7, 2012.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Janet M. Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology.

Date: March 6, 2012.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rass M. Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Therapeutics.

Date: March 6, 2012.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lambratu Rahman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahmanl@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 7, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–3436 Filed 2–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Biosample Repository-Contract Review.

Date: March 15, 2012.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–8894, *begumn@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 7, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–3445 Filed 2–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Member Conflict.

Date: March 1, 2012.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Ramesh Vemuri, Ph.D., Chief, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892. (301) 402–7700, *rv23r@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel; NIA Resource Centers for Minority Aging Research (RCMAR).

Date: March 23, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alfonso R. Latoni, Ph.D., Deputy Chief and Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892. (301) 402–7702, *Alfonso.Latoni@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 7, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–3453 Filed 2–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Cancellation of Meeting

Notice is hereby given of the cancellation of the National Cancer Institute Board of Scientific Advisors, March 5, 2012, 9 a.m. to March 6, 2012, 12 p.m., National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conf. Rm. 10, Bethesda, MD, 20892 which was published in the **Federal Register** on February 1, 2012, 5032.

The meeting has been cancelled.

Dated: February 7, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–3419 Filed 2–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Conflicts and Eating Disorders.

Date: February 29, 2012.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Cognitive Neuroscience and Schizophrenia Panel.

Date: March 1, 2012.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Megan Libbey, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852–9609, 301–402–6807, *libbeym@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Innovations in Treatment.

Date: March 5, 2012.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; R34 HIV and AIDS applications.

Date: March 6, 2012.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Megan Libbey, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852–9609, 301–402–6807, *libbeym@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 7, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–3428 Filed 2–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2011–N261; FXRS12650400000–123–FF04R02000]

Clarks River National Wildlife Refuge, KY; Draft Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Clarks River National Wildlife Refuge (NWR) in Graves, Marshall, and McCracken Counties, Kentucky, for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by March 16, 2012.

ADDRESSES: You may obtain a copy of the Draft CCP/EA by contacting Ms. Tina Chouinard, via U.S. mail at 49 Plainsbrook Place, Jackson, TN 38305, or via email at *tina_chouinard@fws.gov*. Alternatively, you may download the document from our Internet Site at *http://southeast.fws.gov* planning under ''Draft Documents.'' Comments on the Draft CCP/EA may be submitted to the above postal address or email address.

FOR FURTHER INFORMATION CONTACT: Ms. Tina Chouinard, at 731/432–0981 (telephone).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Clarks River NWR. We started the process through a notice in the **Federal Register** on August 29, 2008 (73 FR 50981). For more about the refuge and our CCP process, please see that notice.

Clarks River NWR is located in western Kentucky, an area also known as the Jackson Purchase. The refuge averages approximately 2 to 3 miles wide, extends about 20 miles from near Paducah, Kentucky, to just south of Benton, Kentucky. Due to the meandering nature of the Clarks River, the refuge acquisition boundary protects about 40 river miles.

Clarks River NWR was established in 1997. The acquisition boundary currently approved by Congress is approximately 19,605 acres, of which 8,634 acres have been purchased. The lands are distributed among counties as follows: Graves County (56 acres), Marshall County (5,970 acres), and McCracken County (2,608 acres). Lands are purchased on a willing-seller basis only. Clarks River NWR was established under the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3901) for the development, advancement, management, conservation, and protection of fish and wildlife resources.

Approximately 74 percent of the land associated with the Clarks River NWR is forested, 22 percent is agricultural land, and 2 percent is freshwater marsh/shrub swamp. The refuge is made up of managed impoundments, native warm-season grasses, and disturbed lands such as roads and utility corridors. Refuge lands are managed for all plants and animals that occur in the area of western Kentucky, with a primary emphasis on migratory songbirds and waterfowl, game species, and listed species. Refuge goals and objectives are achieved through forest management, cooperative farming, habitat restoration, water management, and prescribed fire.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Significant issues addressed in the Draft CCP/EA include: (1) Baseline wildlife surveys; (2) bottomland hardwood and riparian forest management; (3) land protection; (4) comprehensive hydrological study of the Clarks River; (5) enhancement of wildlife-dependent visitor services programs; (6) increase in permanent staff; and (7) compatibility determinations.

CCP Alternatives, Including Our Proposed Alternative

We developed three alternatives for managing the refuge (Alternatives A, B, and C), with Alternative B as our proposed alternative. A full description of each alternative is in the Draft CCP/EA. We summarize each alternative below.

Alternative A: Current Management (No Action)

The No Action Alternative, which would maintain current management approaches, was developed using anticipated conditions in the area of Clarks River NWR over the next 15 years. This alternative assumes that conservation management and land protection programs and activities that are currently being undertaken by the Service and other Federal agencies, as well as by State, local, and private organizations, would continue to follow past trends. Species of Federal responsibility, such as threatened and endangered species and migratory birds, would continue to be monitored at present levels. Acquisition of lands for the refuge would occur when funding is appropriated and willing sellers offer land that is identified as quality habitat.

Wildlife population monitoring and surveying would be focused primarily on waterfowl and mammal species. Additional species monitoring would occur opportunistically as partnerships and funding are available. Restoration efforts would continue as small, experimental projects instead of larger projects that promote longer-lasting benefits.

The biological environment would remain protected, but certain systems could suffer if not systematically monitored using focal species as indicators. Management under Alternative A would not adversely impact socioeconomic values of the area, but the refuge would not achieve its potential to provide the public with needed educational and wildlife-dependent recreational activities.

The public use programs of fishing, hunting, wildlife observation, wildlife photography, and environmental education and interpretation would continue at present levels and with current facilities. Public use programs would not change or increase with demand and would not be adapted based on the impacts to refuge resources.

In general, under Alternative A, management and administrative decisions and actions would occur when triggered by demands and sources outside the refuge, with little deliberation and planning being accomplished ahead of time. This alternative, included for the purpose of comparison to baseline conditions, is not considered to be the most effective management strategy for achieving the vision and goals of the refuge.

Alternative B: Optimize Wildlife-Dependent Public Use and Management (Proposed Alternative)

The proposed alternative, Alternative B, would emphasize management of the natural resources of Clarks River NWR based on maintaining and improving wetland habitats, monitoring targeted flora and fauna representative of the surrounding Clarks River watershed, and providing quality public use programs and wildlife-dependent recreational activities. All species occurring on the refuge would be considered, and certain targeted species would be managed for and monitored in addition to species of Federal responsibility. These species would be chosen based on the criteria that they are indicators of the health of important habitat or species of concern. Information gaps in knowledge of the refuge's aquatic species would be addressed.

Restoration efforts, habitat management, a prescribed fire program, and forest management would reflect best management practices determined after examination of historical regimes, soil types and elevation, and the current hydrological system. Management actions would be monitored for effectiveness and adapted to changing conditions, knowledge, and technology. A habitat management plan would be developed to plan future habitat projects and evaluate previous actions.

Overall public use would be monitored to determine if any negative impacts are occurring on resources from overuse. Education programs would be reviewed and improved to complement current management and current staffing. Public use programs would be updated to support and teach the reasons behind management actions, and to provide quality experiences to visitors. The refuge headquarters would be developed to provide more visitor services. In an increasingly developing region, a balanced wildlife-dependent recreational program would be a focus under this alternative. A new visitor center would be constructed. Archaeological resources would be surveyed.

The refuge currently has fee-title ownership of about 8,634 acres with an approved acquisition boundary of 19,605 acres. Lands are purchased on a willing-seller basis only. Alternative B includes a proposed expansion of 34,269 acres and would bring the total refuge acquisition boundary to approximately 53,874 acres, and would protect lands along the east and west forks of the Clarks River. Land acquisitions within the existing and proposed expanded acquisition boundaries would be based on importance of the habitat for target management species. We would offer interpretation of refuge wildlife and habitats, as well as demonstrate habitat improvements for individual landowners.

In general, under Alternative B, management decisions and actions would support wildlife species and habitat occurring on the refuge based on well-planned strategies and sound scientific judgment. Quality wildlife-dependent recreational uses and environmental education and interpretation programs would be offered to support and explain the natural resources of the refuge.

This alternative would add six new positions to current staffing in order to protect resources, provide visitor services, and attain goals of facilities and equipment maintenance in the future. The biological environment would improve as adaptive and best management practices are utilized. Socioeconomic values should also increase as we offer increased wildlife-dependent recreational opportunities. Areas such as this are beneficial to local ecotourism trade and residents searching for natural landscapes and associated benefits.

Alternative C: Maximize Wildlife-Dependent Recreation and Management

Alternative C would emphasize maximizing wildlife-dependent recreational uses on the refuge. The increase of nine staff members in addition to the existing employees would support public use activities, including hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. In general, the focus would be on expanding public use activities to the fullest extent possible, while conducting only mandated resource protection, such as conservation of threatened and endangered species, migratory birds, and archaeological resources.

All management programs for conservation of wildlife and habitat, such as monitoring, surveying, and researching, would support species and resources of importance for public use enhancement. Emphasis would be placed more on interpreting and demonstrating these programs than actual implementation. Providing access with trails would be maximized, as well as providing public use facilities throughout the refuge. Federal trust species and archaeological resources would be monitored as mandated, but other species targeted for management would depend on which ones the public is interested in utilizing. Habitat restoration efforts would be based on public use demands and criteria rather than determined through methods using a strategic habitat conservation approach.

With the majority of staff time and funds supporting a public use program, wildlife-dependent recreation and environmental education and interpretation could be more successful than in the other alternatives. Land acquisitions within the approved acquisition boundary would be based on importance of the habitat for public use. The refuge headquarters and visitor center would be developed for public use activities such as interpretation and outreach.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57).

Dated: January 4, 2012.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2012–3477 Filed 2–14–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

National Park Service

[FWS–R6–R–2011–N211; FXRS1265066CCP0S2–123–FF06R06000]

Detailed Planning To Consider Additional Land Protection on the Missouri River From Fort Randall Dam to Sioux City, IA; National Environmental Policy Act Documents

AGENCY: Fish and Wildlife Service, National Park Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (FWS) and the National Park Service (NPS), U.S. Department of the Interior, as lead agencies, intend to gather information necessary to complete detailed planning and prepare associated documents under the National Environmental Policy Act (NEPA) and its implementing regulations, in order to consider additional land protection on the Missouri River from Fort Randall Dam to Sioux City, Iowa. The FWS and NPS are furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended, and the National Park Service Organic Act of 1916, as amended, to advise other agencies, Tribal governments, and the public of our intentions and to obtain suggestions and information on the scope of issues to include in the environmental documents. Special mailings, newspaper articles, and other media announcements will inform people of the opportunities for input throughout the planning process.

DATES: We are soliciting written comments and will hold public scoping meetings in February 2012. Information on meeting dates and times will be available at *http://parkplanning.nps.gov/niob-ponca* when that information is available.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

Email: niobrara_ponca@fws.gov.

U.S. Mail: Nick Kaczor, USFWS, Division of Refuge Planning, P.O. Box 25486, DFC, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Nick Kaczor, Planning Team Leader, Division of Refuge Planning, USFWS, P.O. Box 25486, DFC, Denver, CO 80225.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, the FWS and NPS, as lead agencies, propose to complete detailed planning on a joint comprehensive conservation strategy and land protection plan (LPP) for the Niobrara Confluence and Ponca Bluffs areas of the Missouri River in southeast South Dakota and northeast Nebraska aimed to improve floodplain management. The LPP would develop a proposal for a comprehensive conservation strategy, including a plan aimed at enhancing wildlife habitat, increasing recreational opportunities, and improving floodplain management within the study area, by working with willing landowners to strategically protect land through acquisition and conservation easements.

The Niobrara Confluence segment between Fort Randall Dam and Lewis and Clark Lake is one of the last portions of the middle Missouri River that remain un-channelized, relatively free-flowing, and undeveloped. This area of the Missouri River's main channel in the old, wider river valley contains important habitat for at least 60 native and 26 sport fish. In addition, the riparian woodlands and island complexes are important for approximately 25 year-round bird species and 115 species of migratory birds, including piping plovers, least terns, and bald eagles.

The Ponca Bluffs segment between Gavins Point Dam and Sioux City is a diverse, relatively unaltered, riverine/floodplain ecosystem characterized by a main channel, braided channels, wooded riparian corridor, pools, chutes, sloughs, islands, sandbars, backwater areas, wetlands, natural floodplain and upland forest communities, pastureland, and croplands. This area also supports a wide variety of wildlife and fisheries resources similar to the Niobrara Confluence segment.

The National Wildlife Refuge System Improvement Act of 1997 outlines six priority public uses (hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation) that are to be facilitated on national wildlife refuges, where compatible.

The river reaches are components of the National Wild and Scenic River System as designated by Congress in 1978 and 1991 under the Wild and Scenic River Act (Pub. L. 90–542, as amended). The National Park Service is the river administering agency and is tasked to protect and enhance the outstandingly remarkable recreational, fish and wildlife, and scenic or similar values. The Wild and Scenic Rivers Act specifies that these river reaches shall be preserved in free-flowing condition and that their Outstandingly Remarkable Values shall be protected for the benefit and enjoyment of present and future generations.

Public feedback into the land protection planning process is essential to ensure that the FWS and NPS include society's input into the proposed project. FWS and NPS will request public review and comment throughout the planning process.

Background

The Missouri River basin encompasses 530,000 square miles—approximately one-sixth of the continental United States. The main stem, stretching from Three Forks, Montana, to St. Louis, Missouri, is the longest river in the United States, at more than 2,300 miles long. Historically, the Missouri River was a dynamic ecosystem, characterized by a changing interplay of open free-flowing, braided channel, sandbar, prairie, wetland, and forest habitats. Although manmade structures and activities have altered many of these natural processes, important habitats still remain, for a rich diversity of plants and animals. The dynamic nature of the Missouri River means that habitats change on a daily, seasonal, annual, and long-term basis. Erosive forces constantly transport sediment down the river, creating and modifying habitat and removing terrestrial vegetation from some areas while creating suitable conditions for new plants to grow in other areas. Seasonal river flow patterns flood river-bottom wetlands and maintain chutes, backwaters, and lakes in the floodplain that provide important wildlife breeding and foraging habitat. The combination of open water, floodplain wetlands, and river vegetation is particularly important for the large number of migratory birds that use the Missouri River during spring and fall migrations.

Despite significant alterations of impoundment and stabilization, portions of the Missouri River have shown resiliency, exhibiting numerous historical characteristics witnessed by Lewis and Clark during their explorations in the early 1800s. The FWS and NPS will work with local communities and willing landowners to conserve significant stretches of the Missouri River. The opportunity to preserve and potentially improve important processes and habitats for fish and wildlife will provide benefits to visitors, neighbors, and local communities of these areas now and into the future. The project proposal is designed to improve conditions within the channel migration zone, retaining those habitat characteristics important to federally managed species such as pallid sturgeon, least tern, and piping plover, while potentially mitigating flooding impacts in the future. In addition, the project proposal is also designed to enhance recreation opportunities such as boating, fishing, hunting, and camping, while increasing scenic values along the river and protecting cultural resources.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your

comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authorities

The FWS and NPS are furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997; the National Park Service Organic Act of 1916, as amended; and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations.

Dated: December 2, 2011.

Matt Hogan,

Acting, Deputy Regional Director, Mountain-Prairie Region, U.S. Fish and Wildlife Service.

Dated: December 20, 2011.

Michael T. Reynolds,

Regional Director, NPS, Midwest Region.

[FR Doc. 2012–3491 Filed 2–14–12; 8:45 am]

BILLING CODE 4310–55–P; 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON06000–L16100000–DP0000]

Notice of Resource Advisory Council Meetings for the Dominguez-Escalante Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Dominguez-Escalante Advisory Council (Council) will meet as indicated below.

DATES: Meetings will be held March 21, 2012; April 4, 2012; and May 2, 2012. All meetings will begin at 3 p.m. and will normally adjourn at 6 p.m. These meetings are in addition to the already-scheduled meeting on March 7, 2012, which was advertised through a separate notice. Any adjustments to duration of meetings will be advertised on the Dominguez-Escalante RMP Web site, *http://www.blm.gov/co/st/en/nca/denca/denca_rmp.html.* Field trips may be scheduled in these months as well. Notice of field trips will also be posted on the Web site.

ADDRESSES: Meetings on March 21 and May 2 will be held at the Delta County Courthouse, Room 234, 501 Palmer, Delta, Colorado. The meeting on April 4 will be held at the Mesa County Courthouse Annex, Training Room A, 544 Rood, Grand Junction, Colorado.

FOR FURTHER INFORMATION CONTACT: Katie Stevens, Advisory Council Designated Federal Official, 2815 H Road, Grand Junction, CO 81506. Phone: (970) 244–3049. *Email: kasteven@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the resource management planning process for the Dominguez-Escalante National Conservation Area and Dominguez Canyon Wilderness.

Topics of discussion during the meeting may include informational presentations from various resource specialists working on the resource management plan, as well as Council reports relating to the following topics: recreation, fire management, land-use planning process, invasive species management, travel management, wilderness, land exchange criteria, cultural resource management and other resource management topics of interest to the Council raised during the planning process.

These meetings are anticipated to occur monthly, and may occur as frequently as every two weeks during intensive phases of the planning process. Dates, times and agendas for additional meetings may be determined at future Advisory Council Meetings, and will be published in the **Federal Register**, announced through local media and on the BLM's Web site for the Dominguez-Escalante planning effort, *www.blm.gov/co/st/en/nca/denca/denca_rmp.html.*

These meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will have time allocated at the beginning and end of each meeting for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited at the discretion of the chair.

Dated: February 9, 2012.

Helen M. Hankins,

State Director.

[FR Doc. 2012–3490 Filed 2–14–12; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB07900 09 L10100000 PH0000 LXAMANMS0000]

Notice of Public Meeting; Western Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Western Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held March 14, 2012, beginning at 9 a.m. with a 30-minute public comment period and will adjourn at 3 p.m.

ADDRESSES: The meeting will be in the BLM's Butte Field Office, 106 N. Parkmont, in Butte, MT.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. During these meetings the council will participate in/discuss/act upon several topics, including the BLM's Sage Grouse Conservation Strategy, a report from the RAC's recreation fee subgroup, and reports from the Butte, Missoula and Dillon field offices.

All RAC meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

FOR FURTHER INFORMATON CONTACT: David Abrams, Western Montana Resource Advisory Council Coordinator, Butte Field Office, 106 North Parkmont, Butte, MT 59701, 406–533–7617, *dabrams@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339

to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Scott Haight,

District Manager, Western Montana District.

[FR Doc. 2012–3483 Filed 2–14–12; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMP010 L14300000.ET0000; NMNM 120333]

Public Land Order No. 7788; Withdrawal of National Forest System Land for the Red Cloud Campground; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 15 acres of National Forest System land from location and entry under the United States mining laws for a period of 20 years to protect the unique recreational and historical interpretive integrity of the Red Cloud Campground within the Cibola National Forest, and to protect a capital investment in the recreation area of approximately $750,000 in Federal funds.

DATES: *Effective Date:* February 15, 2012.

FOR FURTHER INFORMATION CONTACT: Doug William, Forest Supervisor, Cibola National Forest, 2113 Osuna Road NE., Suite A., Albuquerque, New Mexico 87113, 505–346–3869, or Angel Mayes, Roswell Field Office Manager, Bureau of Land Management, 2909 W. Second Street, Roswell, New Mexico 88201, 505–346–3869. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact either of the above individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or questions with either of the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The United States Forest Service will manage the land to protect the capital investment expended to develop the Red Cloud Campground facility and the unique recreational and historical interpretive integrity of the Red Cloud Campground within the Cibola National Forest.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws, to protect the unique recreational and historical interpretative integrity of the Red Cloud Campground: Cibola National Forest.

New Mexico Principal Meridian

T. 1 S., R. 12 E.,
Sec. 30, NW¼SE¼NE¼SW¼,
SE¼SW¼NE¼SW¼,
S½SE¼NE¼SW¼, and
N½NE¼SE¼SW¼.

The area described contains 15 acres, more or less, in Lincoln County.

2. The withdrawal made by this order does not alter the applicability of the general land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) the Secretary determines that the withdrawal shall be extended.

Authority: 43 CFR 2310.3–3(b)(1).

Dated: January 31, 2012.

Anne J. Castle,

Assistant Secretary—Water and Science.

[FR Doc. 2012–3526 Filed 2–14–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–0926–8514; 8360–C19D–454]

Jimbilnan, Pinto Valley, Black Canyon, Eldorado, Ireteba Peaks, Nellis Wash, Spirit Mountain, and Bridge Canyon Wilderness Areas Wilderness Management Plan/Environmental Impact Statement, Lake Mead National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement for the Wilderness Management Plan for the Jimbilnan, Pinto Valley, Black Canyon, Eldorado, Ireteba Peaks, Nellis Wash, Spirit Mountain, and Bridge Canyon Wilderness Areas, Lake Mead National Recreation Area, Nevada.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) is the lead agency for the preparation of an environmental impact statement (EIS) for a wilderness management plan for eight wilderness areas in Lake Mead National Recreation Area, three of which are partially located on adjacent Bureau of Land Management (BLM) lands. The BLM will serve as a cooperating agency in the preparation of the EIS. The wilderness management plan (plan) will establish management goals for these wilderness areas, develop long term direction for monitoring and preserving wilderness character (*i.e.,* natural, untrammeled, undeveloped, and outstanding opportunities for solitude or primitive and unconfined recreation) in the wilderness areas, while also providing for the use and enjoyment of the areas by current and future generations. Additionally, this plan will provide for accountability, interagency consistency, and continuity in the stewardship of these NPS and BLM wilderness areas.

SUPPLEMENTARY INFORMATION: A range of alternatives for stewardship of these eight wilderness areas, consistent with the requirements of the Wilderness Act of 1964, will be developed through this planning process and will include at least no-action and preferred alternatives. Issues the EIS/plan is expected to address will include identifying appropriate uses for these areas; providing for access within, and information about, the wilderness areas while protecting wilderness character; providing for reasonable use of Spirit Mountain and adjacent areas in a manner meeting tribal needs and concerns; restoring disturbed areas within the wilderness areas; and coordinating agency management efforts. The EIS will evaluate and compare the potential environmental consequences of all the alternatives, and appropriate mitigation strategies will be included. The ''environmentally preferred'' alternative will also be identified.

In April, 2010 the NPS and BLM released an Environmental Assessment for the proposed plan. Issues and concerns emerged in regards to appropriateness of use of fixed anchors (e.g., bolting) in wilderness, and conflicts between recreational use and cultural resource protection and Tribal interests could not be resolved. As a

result, it was determined that an EIS would be prepared.

All interested persons, organizations, and agencies are encouraged to submit comments and suggestions on issues and concerns that should be addressed in preparing the plan/EIS, and the range of appropriate alternatives that should be examined. All prior comments and information received in regards to the 2010 Environmental Assessment for the wilderness management plan will be carried forward and fully considered in developing the Draft EIS.

DATES: The NPS in cooperation with the BLM is beginning public scoping via a letter to state and federal agencies, American Indian tribes, local and regional governments, organizations and businesses, researchers and institutions; the congressional delegation; and other interested members of the public. Written comments concerning the scope of the plan/EIS and submittal of relevant environmental information must be postmarked or transmitted not later than March 16, 2012.

ADDRESSES: Interested individuals, organizations, and other entities wishing to provide input to this phase of developing the plan/EIS may mail or email comments to Lake Mead National Recreation Area Wilderness Management Plan, National Park Service, Denver Service Center—Planning, P.O. Box 25287, Denver, CO 80225 (or via the Internet at *http://parkplanning.nps.gov*). Comments may also be mailed or hand-delivered to Superintendent of Lake Mead National Recreation Area, 601 Nevada Way, Boulder City, NV 89005.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Jim Holland, NPS Park Planner, at the Lake Mead National Recreation Area address above. Telephone: (702) 293–8986. Email: *jim_holland@nps.gov*; and Mark Tanaka-Sanders, Wilderness Planner, Bureau of Land Management, 4701 North Torrey Pines, Las Vegas, NV 89130. Telephone: (702) 515–5039. Email: *lvwilderness@blm.gov*. You may also contact Greg Jarvis, Project Manager, Denver Service Center at the address above. Telephone: (303) 969–2263. General information about Lake Mead National Recreation Area is available at *http://www.nps.gov/lame* and general information about the BLM Southern Nevada District is available at *http://www.blm.gov/nv/st/en/fo/lvfo.html*.

Dated: August 8, 2011.

Martha J. Lee,

Acting Regional Director, Pacific West Region.

[FR Doc. 2012–3037 Filed 2–14–12; 8:45 am]

BILLING CODE 4310–A7–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0036

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by March 16, 2012, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via email at *OIRA_Docket@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please reference 1029–0036 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John Trelease at (202) 208–2783, or electronically to *jtrelease@osmre.gov.* You may also review this information collection request by going to *http://www.reginfo.gov* (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI–OSMRE).

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collection of information contained in 30 CFR Part 780—Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan. OSM is requesting a 3-year term of approval for the information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0036, and is displayed in 30 CFR 780.10.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on October 28, 2011 (76 FR 66964). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: 30 CFR Part 780—Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan.

OMB Control Number: 1029–0036.

SUMMARY: Sections 507(b), 508(a), 510(b), 515(b) and (d), and 522 of Public Law 95–87 require applicants to submit operations and reclamation plans for coal mining activities. Information collection is needed to determine whether the plans will achieve the reclamation and environmental protections pursuant to the Surface Mining Control and Reclamation Act. Without this information, Federal and State regulatory authorities cannot review and approve permit application requests.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mine permits and State regulatory authorities.

Total Annual Respondents: 203 coal mine applicants and 24 State regulatory authorities.

Total Annual Burden Hours for All Respondents: 98,876.

Total Annual Burden Costs for All Respondents: $1,791,823.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the individual listed in **ADDRESSES**. Please refer to OMB control number 1029–0036 in all correspondence.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 12, 2012.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2012–3311 Filed 2–14–12; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[DN 2858]

Notice of Receipt of an Amended Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received an amended complaint entitled Certain Consumer Electronics and Display Devices and Products Containing Same, DN 2858; the Commission is soliciting comments on any public interest issues raised by the amended complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received an amended complaint and a submission pursuant to sections 210.8(b) and 210.14(a) of the Commission's Rules of Practice and Procedure filed on behalf of Graphics Properties Holdings, Inc. on January 30, 2012. The amended complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain consumer electronics and display devices and products containing same. The complaint names as respondents Research In Motion Ltd. of Canada; Research In Motion Corp. of TX; HTC Corporation of Taiwan; HTC America, Inc. of WA; LG Electronics, Inc. of South Korea; LG Electronics U.S.A., Inc. of NJ; LG Electronics MobileComm U.S.A. Inc. of CA; Apple Inc. of CA; Samsung Electronics Co., Ltd. of South Korea; Samsung Electronics America, Inc. of NJ; Samsung Telecommunications America L.L.C. of TX; Sony Corporation of Japan; Sony Corporation of America of NY; Sony Electronics, Inc. of CA; Sony Ericsson Mobile of Sweden; Sony Ericsson Mobile Communications (USA) Inc. of GA; Motorola Mobility, Inc. of IL; and Motorola Mobility Holdings, Inc. of IL.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2858'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for

public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: February 10, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–3567 Filed 2–14–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–650]

Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same; Notice of Commission Advisory Opinion

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued an advisory opinion in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3104. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 30, 2008, based on a complaint filed by John Mezzalingua Associates, Inc., d/b/a PPC, Inc. of East Syracuse, New York (''PPC''). 73 FR 31145 (May 30, 2008). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) (''Section 337'') in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain coaxial cable connectors and components thereof and products containing the same by reason of infringement of various patents, including U.S. Patent No. 6,558,194 (''the '194 patent''). The notice of institution named eight respondents. After institution, two respondents were terminated based on consent orders and four respondents were found to be in default (''defaulting respondents''). Two respondents, Fu-Ching Technical Industry, Co., Ltd., and Gem Electronics, Inc., remained active.

On October 13, 2009, the Administrative Law Judge (''ALJ'') issued his final initial determination (''ID'') and recommended determination on remedy and bonding. The ALJ found a violation of section 337 by the defaulting respondents in connection with the '194 patent. On December 14, 2009, the Commission determined to review the final ID in part, but the Commission did not review the ALJ's determination with respect to the '194 patent. The Commission issued a general exclusion order on March 31, 2010 with respect to the '194 patent based on a finding of violation of Section 337 by the defaulting respondents.

On September 12, 2011, non-respondent, Holland Electronics, LLC (''Holland'') filed a request for an advisory opinion under Commission Rule 210.79 (19 CFR 210.79) that would declare that its coaxial cable connectors, utilizing an axial but not radial compression for deformation, are outside of the scope of the Commission's March 31, 2010 general exclusion order. Holland further requested that the Commission conduct all proceedings related to the advisory opinion in an expedited manner and not refer the matter to an administrative law judge (ALJ).

On October 31, 2011, the Commission determined to institute an advisory opinion proceeding based on Holland's request. 76 FR 68504 (November 4, 2011). The Commission directed PPC and the Commission Investigative Attorney (''IA'') to state their views regarding whether they oppose Holland's request for an advisory opinion that its subject connectors are not covered by the March 31, 2010, general exclusion order, and if so, whether they believe the matter should be referred to an ALJ. *Id.* On November 11, 2011, PPC filed a response in support of Holland's request for an advisory opinion. On November 14, 2011, the IA also filed a response in support of Holland's request. Both PPC and the IA stated that it was not necessary to refer this matter to the ALJ.

The Commission has reviewed the parties' submissions and has determined to grant Holland's request for an advisory opinion that its products embodying the design set forth in Exhibit H to Holland's advisory opinion request, and specifically the products listed in Exhibit I to Holland's request that embody that design, are not covered by the Commission's general exclusion order issued on March 31, 2010.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.79(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.79(a)).

By order of the Commission.

Issued: February 9, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–3466 Filed 2–14–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–755]

Certain Starter Motors and Alternators; Determination Not To Review an Initial Determination; Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 52) granting a joint motion to terminate the investigation as to respondent Electric Motor Service, Inc. (EMS) of Logan, West Virginia. The Commission is also requesting written submissions concerning a remedy against a defaulted respondent.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3104. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436,

telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 19, 2011, based on a complaint filed by Remy International, Inc. and Remy Technologies, L.L.C. both of Pendleton, Indiana (collectively, ''Remy''). 76 FR 3158 (Jan. 19, 2011). The complaint alleges violations of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain starter motors and alternators that by reason of infringement of certain claims of U.S. Patent Nos. 5,105,114 (''the '114 patent''); 5,252,878 (''the '878 patent''); 5,268,605 (''the '605 patent); 5,295,404 (''the '404 patent''); 5,307,700 (''the '700 patent''); 5,315,195 (''the '195 patent''); and 5,453,648 (''the '648 patent''). On May 13, 2011, the Commission determined not to review an ID granting Remy's motion to amend the complaint and notice of investigation to add two additional respondents. Notice (May 13, 2011). The notice of investigation, as amended, names ten respondents.

On June 30, 2011, the Commission terminated the investigation as to the '114 patent. Notice (June 30, 2011). On the same date, the Commission terminated Wuxi Susan Auto Parts Company of Wuxi City, China from the investigation based on a settlement agreement. Notice (June 30, 2011). On July 18, 2011, the Commission terminated Yun Shen U.S.A., Inc. of San Francisco, California based on a settlement agreement. Notice (July 18, 2011). On July 28, 2011, the Commission terminated Linhai Yongei of Linhai City, China based on a settlement agreement. Notice (July 28, 2011).

On August 27, 2011, the Commission terminated Yongkang Boyu Auto Motor Company of Yongkang, China based on a consent order. Notice (Aug. 27, 2011). On October 27, 2011, the Commission terminated the investigation in part as to respondent Wetherill Associates, Inc. d/b/a WAI Global of Fort Lauderdale, Florida (''Wetherill'') based on a consent order that is limited to the '605, '404, '700 and '648 patents, and that excludes the '878 and '195 patents. Notice (Oct. 27, 2011). On December 2, 2011, the Commission terminated the investigation as to respondent Metric Sales & Engineering, Inc. of Northfield, Illinois based on a consent order. Notice (Dec. 2, 2011). On December 29, 2011, the Commission terminated the investigation as to respondent Wan Li Industrial Development, Inc. of South El Monte, California based on a settlement agreement. Notice (Dec. 29, 2011). Also on December 29, 2011, the Commission terminated the investigation as to Wetherill based on a settlement agreement. Notice (Dec. 29, 2011).

On January 14, 2012, the Commission found respondent American Automotive Parts, Inc. (AAP) of Niles, Illinois in default. Notice (Jan. 12, 2012). On January 24, 2012, the Commission terminated the investigation as to respondent Motorcar Parts of America, Inc. of Torrance, California based on a settlement agreement. Notice (Jan. 24, 2012).

On January 20, 2012, the ALJ issued the subject ID, granting a joint motion by Remy and EMS to terminate EMS based on a settlement agreement. The Commission investigative attorney supported the motion. The ALJ found that the motion was in compliance with Commission rule 210.21(b)(1), 19 CFR 210.21(b)(1) and that termination of the investigation as to EMS presented no public interest concerns under Commission rule 210.50(b)(2), 19 CFR 210.50(b)(2). No petitions for review of this ID were filed. The Commission has determined not to review the ID.

Section 337(g)(1) (19 U.S.C. 1337(g)(1)) and Commission Rule 210.16(c) (19 CFR 210.16(c)) authorize the Commission to order limited relief against a respondent found in default, unless after consideration of the public interest factors, it finds that such relief should not issue. The Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered against AAP. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry are either adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is requested to state the dates that the patents at issue expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on March 2, 2012. Reply submissions must be filed no later than the close of business on March 9, 2012. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 8 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the

Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.16, 210.42, and 210.50 of the Commission's Rules of Practice and Procedure, 19 CFR 210.16, 210.42, and 210.50.

By order of the Commission.
Issued: February 9, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–3467 Filed 2–14–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–768]

Certain Vaginal Ring Birth Control Devices; Termination of the Investigation Based on Withdrawal of the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 30) of the presiding administrative law judge (''ALJ'') terminating the above-captioned investigation based on withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 25, 2011, based on a complaint filed by Femina Pharma Incorporated of Miami, Florida. 76 FR 17444. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain vaginal birth control devices by reason of infringement of certain claims of U.S. Patent No. 6,086,909. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named the following respondents: The Canamerican Drugs Inc., The Canamerican Global, Inc., Canadian Med Service, Panther Meds Inc., Canada Drugs Online, Canadadrugs.com LP, and North Drug Store, collectively of Winnipeg, Manitoba, Canada; Drug World Canada, CanDrug Health Solutions Inc., Big Mountain Drugs, BestBuyRx.com, and Blue Sky Drugs, collectively of Surrey, British Columbia, Canada; ABC Online Pharmacy of Burnaby, British Columbia, Canada; Canada Pharmacy of Blaine, Washington (collectively, ''the non-participating respondents''); and Merck & Co., Inc. of Whitehouse Station, New Jersey; Schering Plough Corporation of Kenilworth, New Jersey; CVS Caremark Corporation (''CVS Caremark'') and CVS Pharmacy, Inc., both collectively of Woonsocket, Rhode Island; Wal-Mart Stores, Inc. of Bentonville, Arkansas; Walgreens Co. of Deerfield, Illinois; Organon USA, Inc. of Durham, North Carolina; and N.V. Organon of Oss, Netherlands.

On June 3, 2011, the Commission issued notice of its determination not to review the ALJ's ID granting complainant's and CVS Caremark's joint motion to terminate the investigation as to CVS Caremark. On August 17, 2011, the Commission issued notice of its determination not to review the ALJ's ID finding the non-participating respondents in default.

On January 17, 2012, complainant moved to terminate the investigation as to all respondents, including those previously found in default, on the basis of withdrawal of its complaint. No party opposed the motion.

The ALJ issued the subject ID on January 20, 2012, granting the motion for termination of the investigation. He found that the motion for termination satisfied Commission rule 210.21(a). No party petitioned for review of the ID. The Commission has determined not to review the ID, and the investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.21 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.21, 210.42(h).

Issued: February 9, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–3468 Filed 2–14–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Liability, and Compensation Act

Notice is hereby given that on February 9, 2012, a proposed Consent Decree in *United States and Nebraska* v. *NL Industries, Inc.,* Civil Action No. 8:12-cv-00059 was lodged with the United States District Court for the District of Nebraska.

In that lawsuit, the United States and State of Nebraska seek to recover response costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'') in connection with the U.S. Environmental Protection Agency's continuing cleanup of the Omaha Lead Superfund Site. The proposed consent decree will require NL Industries, Inc. to pay $624,000 to the Hazardous Substance Superfund in partial reimbursement of the United States' response costs and pay $26,000 to the Nebraska Department of Environmental Quality.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and Nebraska* v. *NL Industries, Inc.,* D.J. Ref. 90–11–3–07834/5.

During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://*

www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–3479 Filed 2–14–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for New Mexico

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in status of the payable periods under the EB program for New Mexico.

The following change has occurred since the publication of the last notice regarding the State's EB status:

• The Federal authorization to have a three year look-back was recently extended to February 29, 2012. However, New Mexico used a hard end date in state law for the expiration of its three year look-back provision. As a result, New Mexico's three year look-back legislation has expired. With the expiration of the three year look-back, New Mexico failed to meet the criteria to remain triggered ''on'' to EB with the week ending January 7, 2012 and the payable period in the EB program for New Mexico concluded January 28, 2012.

The trigger notice covering state eligibility for the EB program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by email: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 8th day of February, 2012.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2012–3495 Filed 2–14–12; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request use of a new information collection. This information collection is an order form for registrants or other authorized individuals to request information from or copies of Selective Service System (SSS) records. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before April 16, 2012 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to (301) 713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number (301) 837–1694, or fax number (301) 713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on all respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collections:

Title: Selective Service Record Request.

OMB number: 3095–00XX.

Agency form numbers: NA Form 13172.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 3,200.

Estimated time per response: 2 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 107.

Abstract: The National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers the Selective Service System (SSS) records. The SSS records contain both classification records and registration cards of registrants born before January 1, 1960. When registrants or other authorized individuals request information from or copies of SSS records they must provide on forms or letters certain information about the registrant and the nature of

the request. Requestors use NA Form 13172, Selective Service Record Request to obtain information from SSS records stored at NARA facilities.

Dated: February 6, 2012.

Michael L. Wash,

Executive for Information Services/CIO.

[FR Doc. 2012–3494 Filed 2–14–12; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0035]

Draft Regulatory Guide: Issuance, Availability Decommissioning of Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG) DG–1271 ''Decommissioning of Nuclear Power Reactors.'' This guide describes a method NRC considers acceptable for use in decommissioning power reactors.

DATES: Submit comments by April 16, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly-available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0035. You may submit comments by the following methods:

• *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0035. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*. *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: James C. Shepherd, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6712 or email *James.Shepherd@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0035 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0035.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0035 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Further Information

The NRC is issuing for public comment a draft guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

DG–1271 is proposed Revision 1 of Regulatory Guide 1.184, ''Decommissioning of Nuclear Power Reactors,'' dated July 2000. This proposed revision of Regulatory Guide 1.184 describes a method that the staff of the NRC considers acceptable for use in complying with the NRC's regulations relating to the decommissioning process for nuclear power reactors.

Backfitting and Issue Finality

As discussed in the ''Implementation'' section of DG–1271, the NRC has no current intention to impose this regulatory guide on holders of current operating licenses or combined licenses. Accordingly, the issuance of this regulatory guide would not constitute ''backfitting'' as defined in Title 10 of the Code of Federal Regulations (10 CFR) 50.109(a)(1) of the Backfit Rule or be otherwise inconsistent with the applicable issue finality provisions in 10 CFR part 52.

This regulatory guide may be applied to applications for operating licenses and combined licenses docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications for operating licenses and combined licenses submitted after the issuance of the regulatory guide. Such action would not constitute backfitting as defined in 10 CFR 50.109(a)(1) or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the

relevant issue finality provisions in Part 52.

Dated at Rockville, Maryland, this 2nd day of February 2012.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–3377 Filed 2–14–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400, NRC–2012–0034]

Environmental Assessment and Finding of No Significant Impact; Carolina Power and Light Company Shearon Harris Nuclear Power Plant, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Araceli T. Billoch Colón, Project Manager, Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Rockville, Maryland, 20822. Telephone: (301) 415–3302; fax number: (301) 415–1032; email: *Araceli.Billoch@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption pursuant to Title 10 of the Code of Federal Regulations (10 CFR) 50.46, ''Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors,'' and 10 CFR part 50, appendix K, ''ECCS [Emergency Core Cooling System] Evaluation Models,'' to allow for the use of M5™ alloy fuel rod cladding for Renewed Facility Operating License No. NPF–63, issued to Carolina Power and Light Company (the licensee), doing business as Progress Energy Carolinas Inc., for operation of the Shearon Harris Nuclear Power Plant, Unit 1 (HNP), located in New Hill, North Carolina. In accordance with 10 CFR 51.21, ''Criteria for and Identification of Licensing and Regulatory Actions Requiring Environmental Assessments,'' the NRC staff prepared an environmental assessment documenting its finding. The NRC staff concluded that the proposed action will have no significant environmental impact.

II. Environmental Assessment Summary

Identification of the Proposed Action

The proposed action would exempt the licensee from certain requirements of 10 CFR 50.46 and appendix K to 10 CFR part 50. Specifically, 10 CFR 50.46, paragraph (a)(1)(i) provides requirements for reactors containing uranium oxide fuel pellets clad in either zircaloy or ZIRLO. Additionally, appendix K to 10 CFR part 50 presumes the use of zircaloy or ZIRLO fuel cladding when doing calculations for energy release, cladding oxidation, and hydrogen generation after a postulated loss-of-coolant accident. Therefore, both of these regulations state or assume that either zircaloy or ZIRLO is used as the fuel rod cladding material. The proposed exemption would allow the licensee use of M5™ cladding fuel assemblies into the core of HNP Unit 1. The proposed action is in accordance with the licensee's application dated January 19, 2011.

The Need for the Proposed Action

The proposed exemption is needed to allow the licensee the use of M5™ alloy fuel rod cladding at HNP. The licensee has requested an exemption from the requirements of 10 CFR 50.46 and appendix K to 10 CFR part 50 to allow for loading of M5™ clad fuel assemblies, in lieu of zircaloy or ZIRLO, into the core during Refueling Outage 17 that is currently scheduled for spring 2012.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no environmental impacts associated with the proposed exemption. The details of the NRC staff's safety evaluation will be provided in the exemption that, if approved by the NRC, will be issued as part of the letter to the licensee approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of nonradiological effluents. No changes to the National Pollutant Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. No impacts to the air or ambient air quality are expected. There are no impacts to historic and cultural resources. In addition, there are also no known socioeconomic or environmental justice impacts associated with the proposed action. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the ''no action'' alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the ECCS rules in 10 CFR 50.46 and appendix K to 10 CFR part 50 and would not be able to use M5™ clad fuel in the HNP core during the upcoming refueling outage. The environmental impacts of the proposed exemption and the ''no action'' alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for HNP, NUREG–0972, dated October 31, 1983, as supplemented through the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Shearon Harris Nuclear Power Plant, Unit 1—Final Report (NUREG–1437, Supplement 33).''

Agencies and Persons Consulted

In accordance with its stated policy, on January 19, 2012 the NRC staff consulted with the North Carolina State official, Mr. Lee Cox of the Division of Radiation Protection, with the North Carolina Department of Environment and Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

III. Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

Documents related to this action are available electronically at the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For further details with respect to the proposed action, see the licensee's letter dated January 19, 2011, located under ADAMS Accession No. ML11313A162. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 6th day of February 2012.

For the Nuclear Regulatory Commission.

Araceli T. Billoch Colón,

Project Manager, Plant Licensing Branch 2–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–3521 Filed 2–14–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0278; Docket No.: 50–286]

Entergy Nuclear Indian Point 3, LLC.; Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit 3; Exemption

1.0 Background

Entergy Nuclear Operations, Inc. (Entergy or the licensee) is the holder of Facility Operating License No. DPR–64, which authorizes operation of Indian Point Nuclear Generating Unit 3 (IP3). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

IP3 is a pressurized-water reactor located approximately 24 miles north of the New York City boundary line on the east bank of the Hudson River in Westchester County, New York.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) 50.48(b), requires that nuclear power plants that were licensed to operate before January 1, 1979, satisfy the requirements of 10 CFR part 50, Appendix R, ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,'' Section III.G, ''Fire protection of safe shutdown capability.'' The circuit separation and protection requirements being addressed in this request for exemption are specified in Section III.G.2. Since IP3 was licensed to operate before January 1, 1979, IP3 is required to meet Section III.G.2 of Appendix R to 10 CFR part 50.

The underlying purpose of Section III.G of Appendix R to 10 CFR part 50 is to establish reasonable assurance that safe shutdown (SSD) of the reactor can be achieved and maintained in the event of a postulated fire in any plant area. Circuits which could cause maloperation or prevent operation of redundant trains of equipment required to achieve and maintain hot shutdown conditions as a result of fire in a single fire area must be protected in accordance with III.G.2. If conformance with the technical requirements of III.G.2 cannot be assured in a specific fire area, an alternative or dedicated shutdown capability must be provided in accordance with Section III.G.3, or an exemption obtained in accordance with 10 CFR 50.12, ''Specific exemptions.''

By letter dated March 6, 2009, Entergy requested an exemption from the requirements of 10 CFR part 50, Appendix R in accordance with 10 CFR 50.12. Specifically, Entergy requested an exemption to allow the use of Operator Manual Actions (OMAs) in lieu of meeting certain technical requirements of III.G.2 in Fire Areas AFW–6, ETN–4{1}, ETN–4{3}, PAB–2{3}, PAB–2{5}, TBL–5, and YARD–7. The table below provides the dates and topics of the submittals related to this request.

Subject	Author	Date	Description	ADAMS accession
Exemption Request from Appendix R.	Entergy	March 6, 2009	Original Submittal	ML090760993
Revised Exemption Request.	Entergy	October 1, 2009	Revision to March 2009, submittal, incorporated changes to Attachment 2, *Technical Basis in Support of Exemption Request*.	ML092810230
Request for Additional Information (RAI) #1.	NRC	January 20, 2010	Request for information on the overall defense-in-depth for each fire zone.	ML100150128
RAI Response #1	Entergy	May 4, 2010	Response to the staff's January 20, 2010, RAI.	ML101320263
RAI #2	NRC	August 11, 2010	RAI on reactor coolant system makeup, separation distances, etc.	ML102180331
RAI Response #2	Entergy	September 29, 2010	Response to the staff's August 11, 2010, RAI.	ML102930234
RAI #3	NRC	December 16, 2010	RAI on reactor coolant system makeup	ML103500204
RAI Response #3	Entergy	January 19, 2011	Responses to the staff's December 16, 2010, RAI.	ML110310242
Letter to revise previously submitted information.	Entergy	February 10, 2011	Letter updating tables contained in previous submittals.	ML110540322
Letter to revise previously submitted information.	Entergy	May 26, 2011	Letter updating tables contained in previous submittals.	ML11158A196

III.G.2 establishes various protection options for providing reasonable assurance that at least one train of systems, equipment and cabling required to achieve and maintain hot shutdown conditions remains free of fire damage. In lieu of providing one of the means specified in the regulation, Entergy requests an exemption from III.G.2 to allow the use of OMAs to achieve and maintain hot shutdown conditions in the event of fire in seven fire areas at IP3; specifically, Fire Areas AFW–6, ETN–4{1}, ETN–4{3}, PAB–2{3}, PAB–2{5}, TBL–5, and YARD–7.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The licensee stated that special circumstances exist because the application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

In accordance with 10 CFR 50.48(b), nuclear power plants licensed to operate before January 1, 1979, are required to meet Section III.G, of 10 CFR part 50, Appendix R. The underlying purpose of Section III.G of 10 CFR part 50, Appendix R, is to ensure that the ability to achieve and maintain SSD is preserved following a fire event. The regulation intends for licensees to accomplish this by extending the concept of defense-in-depth to:

- Prevent fires from starting.
- Rapidly detect, control, and extinguish promptly those fires that do occur.
- Provide protection for structures, systems, and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the SSD of the plant.

III.G.2 requires one of the following means to ensure that a redundant train of SSD cables and equipment is free of fire damage, where redundant trains are located in the same fire area outside of primary containment:

a. Separation of cables and equipment by a fire barrier having a 3-hour rating;

b. Separation of cables and equipment by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards and with fire detectors and an automatic fire suppression system installed in the fire area; or

c. Enclosure of cables and equipment of one redundant train in a fire barrier having a 1-hour rating and with fire detectors and an automatic fire suppression system installed in the fire area.

In its March 6, 2009, and October 1, 2009, submittals, Entergy requested an exemption from certain technical requirements of III.G.2 to the extent that one of the redundant trains of systems necessary to achieve and maintain hot shutdown is not maintained free of fire damage in accordance with one of the required means prescribed in III.G.2 in Fire Areas AFW–6, ETN–4{1}, ETN–4{3}, PAB–2{3}, PAB–2{5}, TBL–5, and YARD–7.

Each OMA included in this review consists of a sequence of tasks that occur in various fire areas. The OMAs are initiated upon confirmation of a fire in a particular fire area, which the licensee has further subdivided into fire zones. Listed in the order of the fire area of fire origin, the OMAs included in this review are as follows:

OMA No.	Area of fire origin	Area name	Fire zone crediting the OMA	Operator manual actions
1	AFW–6	Auxiliary Feedwater (AFW) Pump Room.	23	Locally start 33 AFW Pump via operation of the Bus 6A circuit breaker.
2	ETN–4{1}	Entrance to Electrical Tunnels	7A	Swap 32 Component Cooling Water (CCW) pump to alternate power supply or align city water to charging pumps.
3			7A	Operate 480V Bus 3A breaker locally to start 31 AFW pump.
4			7A	Locally operate the bypass valve for Flow Control Valve (FCV)–1121 in support of use of 31 AFW pump.
5			60A	Operate HCV–1118 manually to control 32 AFW pump.
6			7A, 60A	Align Appendix R Diesel Generator (ARDG) to 480 V Buses 2A, 3A, 5A, and 312.
7			7A, 60A	Swap 31 or 32 charging pump to alternate power supply.
8			7A, 60A	Locally operate FCV–405B, FCV–405D, or FCV–406B to control AFW flow to Steam Generators (SGs).
9			60A	Locally open valve 227 to establish charging [previously "CVCS"] makeup flowpath to Reactor Coolant System (RCS).
10			60A	Locally close Level Control Valve (LCV)–112C and open valve 288 to align charging pump suction to the Refueling Water Storage Tank (RWST).
11			60A	Locally operate Pressure Control Valve (PCV)–1139 to ensure steam supply to 32 AFW pump.
12			60A	Locally operate PCV–1310A and PCV–1310B to ensure steam supply to 32 AFW pump.
13			60A	Locally manually perform Service Water (SW) pump strainer backwash as required.
14	ETN–4{3}	Electrical Tunnel	73A	Operate HCV–1118 manually to control 32 AFW pump.
15			73A	Locally operate PCV–1139 to ensure steam supply to 32 AFW pump.
16			73A	Locally operate 32 PCV–1310A, PCV–1310B to ensure steam supply to 32 AFW pump.
17			73A	Locally operate FCV–405C and FCV–405D to control AFW flow to SG.
18	PAB–2{3}	Primary Auxiliary Building; Charging Pump Rooms.	6	Locally close valve LCV–112C and open valve 228 to align charging pump suction path to RWST.

OMA No.	Area of fire origin	Area name	Fire zone crediting the OMA	Operator manual actions
19	PAB–2{5}	Primary Auxiliary Building	17A, 19A, 58A.	Locally close supply breaker for 32 Charging Pump [previously ''CVCS''] Pump.
20			17A, 19A, 58A.	Locally control 32 charging [previously ''CVCS''] pump using scoop tube positioner.
21			59A	Open bypass valve 227 to establish charging flowpath to RCS around potentially failed closed HCV–142.
22			17A, 20A, 27A, 30A.	Locally close LCV–112C and open bypass valve 288 to establish flowpath from RWST to charging pump suction.
23	TBL–5	Turbine Building and the AFW Pump Building.	52A	Locally operate [bypass valve for] FCV–1121 AFW pump recirculation valve during pump startup.
24			52A, 54A	Locally operate FCV–406A and FCV–406B to control AFW flow to SGs.
25			37A, 38A, 43A, 44A.	Locally/manually backwash SW pump strainer as required if power to strainer associated with selected SW pump is lost (use one of STR PMP–31 through STR PMP–36).
26	YARD–7	External Yard Areas Intake Structure.	22	Locally start ARDG to supply Motor Control Center (MCC) 312A in support of the use of SW pump 38.
27			22, 222	Locally/manually backwash SW Pump strainer as required if power to strainer associated with selected SW pump is lost.

In their submittals, the licensee described elements of their fire protection program that provide their justification that the concept of defense-in-depth that is in place in the above fire areas is consistent with that intended by the regulation. To accomplish this, the licensee utilizes various protective measures to accomplish the concept of defense-in-depth. Specifically, the licensee stated that the purpose of their request was to credit the use of OMAs, in conjunction with other defense-in-depth features, in lieu of the separation and protective measures required by III.G.2 for a fire in the fire areas stated above.

In their March 6, 2009, and October 1, 2009, submittals, the licensee provided an analysis that described how fire prevention is addressed for each of the fire areas for which the OMAs may be required because the separation requirements for equipment and electrical circuits required by III.G.2 are not met. Specifically, the licensee stated that noncombustible materials have been used to the maximum extent practicable and that the introduction of combustible materials into areas with safety-related equipment, including Fire Areas AFW–6, ETN–4{1}, ETN–4{3}, PAB–2{3}, and PAB–2{5} is strictly controlled by administrative procedures. The administrative procedures govern the handling, storage, and limitations for use of ordinary combustible materials, combustible and flammable gases and liquids, and other combustible supplies. In addition, the licensee stated that with the exception of Fire Areas TBL–5 and YARD–7, all of the fire areas identified in the licensee's request are subject to the Indian Point Energy Center Transient Combustible Control Program, as implemented via procedure EN–DC–161, ''Control of Combustibles,'' and are controlled as Level 2 combustible control areas. The licensee also stated that Fire Area TBL–5, consisting of the Turbine Building and certain adjacent fire zones, does not contain safety-related structures, systems or components (SSCs) and is not subject to the explicit transient combustible controls of EN–DC–161 but that procedure OAP–017, ''Plant Surveillance and Operator Rounds'' includes inspection guidelines for operator rounds, which include monitoring for general area cleanliness, and for any housekeeping problems that may present a fire or safety concern. Consequently, operator rounds performed each shift provide for the monitoring of Area TBL–5 and other plant areas for accumulations of combustibles that could present an unacceptable fire safety challenge. Similarly, procedure ENMA–132, ''Housekeeping'' includes guidance for monitoring general area cleanliness as well as monitoring for accumulations of combustibles. The licensee stated that the administrative controls are described in the IP3 Fire Protection Program (FPP), which is incorporated by reference into the Updated Final Safety Analysis Report.

The licensee stated that both thermoplastic and thermoset low-voltage power, control, and instrument cables are installed at IP3. Since the thermoplastic insulated cables were manufactured and installed prior to the issuance of IEEE–383, a standard for nuclear plant cables, they were not qualified to that standard. In its May 4, 2010 letter, the licensee stated that the non-IEEE–383-qualified cables are constructed with an asbestos glass braid outer jacket which provides protection from flame spread. In addition, the licensee stated that the results of various tests, as well as an actual fire event at Indian Point Nuclear Generating Unit 2 (IP2) during plant construction, have demonstrated the ability of this type of thermoplastic insulated cables to minimize the growth and spread of cable fires. The licensee also stated that the likelihood of self-ignited cable fires is minimized by appropriately sized electrical protection devices (*e.g.,* fuses and circuit breakers).

All of the fire areas in the plant are comprised of one or more fire zones consisting of separate compartments or fire zone delineations based on spatial separation. In addition, the licensee stated that the localization of hazards and combustibles within each fire zone, combined with the spatial or physical barrier separation between zones, provides reasonable assurance that a fire that occurs within a particular zone will be confined to that zone. As such, the licensee provided a characterization of the defense-in-depth that is present in each of the fire zones containing multiple trains of SSD equipment. The licensee further stated that for each of the fire zones where OMAs are performed, the adequacy of non-rated fire barriers was evaluated to ensure that they can withstand the hazards associated with the area. Therefore, this review evaluates the defense-in-depth provided in each of the zones of concern.

In its submittals, the licensee provided a summary of plant-specific fire protection features provided for each fire zone identified in its request including an account of combustible

loading (both fixed and transient), ignition sources, detection, suppression, administrative controls, and identified any additional fire protection features that may be unique to the fire zone, such as electrical raceway fire barriers. In its responses, the licensee stated that combustibles and sources of ignition are tightly controlled by administrative controls programs and that the areas included in this exemption are not shop areas so hot work activities (such as welding) are infrequent and appropriate administrative controls (*e.g.,* hot work permits, fire watch, and supervisory controls) are in place if hot work activities do occur. The licensee also stated that the original installation of the suppression and detection systems was accepted by the NRC staff in safety evaluation reports (SERs) dated March 6, 1979, and a supplement dated May 2, 1980, and that there are no code compliance items that present an adverse impact to the implementation of the requested OMAs. Within the fire zones of concern to its request, the licensee stated that non-rated fire barrier assemblies are only used or credited in Fire Area AFW–6 (Fire Zone 23), Fire Area ETN–4 (Fire Zones 7A and 60A), and Fire Area PAB–2 (Fire Zone 27A) and that in each case, the fire resistive capability of the barrier was evaluated and found to be acceptable given other features and circumstances present in those zones.

Entergy stated that for each of the fire areas addressed in this evaluation, Post-Fire Safe Shutdown (PFSSD) is principally accomplished by remaining in the Central Control Room (CCR) and conducting a normal (non-alternative) shutdown. In all cases, the identified OMAs mitigate conditions where certain technical requirements of III.G.2 are not satisfied.

Entergy further stated that the OMAs required for achieving and maintaining hot shutdown conditions are feasible, reliable, and are not impacted by environmental conditions (radiation, lighting, temperature, humidity, smoke, toxic gas, noise, fire suppression discharge, etc.) associated with fires in III.G.2 areas. The feasibility and reliability of the requested OMAs is addressed in Section 4.0 of this evaluation.

NRC Staff Observations

In its May 4, 2010 response to RAI–07.1, the licensee stated that no credit was taken for immediate and proactive OMA response by plant operators upon the receipt of a fire detection alarm in any of the identified fire zones. Instead, the licensee stated that OMAs are initiated upon the detection of operating abnormalities or failures caused by a postulated fire event. In this same response, the licensee stated that they conducted exercises using the plant simulator to evaluate the feasibility of the OMAs where a fire condition or a spontaneous reactor trip caused by a fire was announced at the outset of the simulation followed by the failure of discrete components that are subject to impairment due to fire damage to cables or components resulting from a fire in the area of concern. For fires originating in fire zones lacking fire detection and/or automatic fire suppression systems, the NRC staff considers it improbable that the operators would properly indentify that the indications were the result of a fire instead of some other fault. In addition, the operators would be delayed in positively identifying the location of the fire based on these indirect and ambiguous indicators. Therefore, for some scenarios involving fire zones that lack fire detection systems, operators are unlikely to identify and respond to a fire event in a manner that prompts them to perform certain OMAs prior to a significant degradation of the plant's condition. This becomes especially relevant for OMAs that are required to be completed within a relatively short period of time, e.g., within about 30 minutes, or have limited margins available to complete the required actions.

For OMAs that are required to be completed within a short period of time, the NRC staff evaluates if operators can reliably perform the OMA. In order to be able to perform OMAs reliably, it is important that operators are able to promptly implement any required action based on clear indications. Indirect indicators and diagnostic analysis would result in delayed action to initiate the appropriate OMAs and would impair their reliable completion. For example, loss of control or indication for a pump or other affected component could result from the power supply circuit breaker opening due to an electrical fault other than a fire, and the operator might delay taking actions for a fire while investigating other potential and more-likely causes. The NRC staff documented a position on procedures and training for such actions in Section 4.2.9 of NUREG–1852, ''Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire,'' which notes that the procedures for reactive actions should clearly describe the indications which prompt initiation of the actions. Therefore, where OMAs need to be performed within a short period of time, fire zones crediting those OMAs are expected to have more robust defense-in-depth and clear, direct procedures than fire zones that have a significant margin in their OMA performance times.

In the August 11, 2010 RAI–02.1, and the December 16, 2010 RAI–01.1, the NRC staff requested the licensee to describe the spatial separation between redundant trains of equipment. However, the licensee's response only provided information regarding the separation between ignition sources and safe shutdown equipment and not information regarding the separation between redundant trains of equipment within the area. For example, in its response to RAI–01.1 dated January 19, 2011, the licensee stated that ''With respect to Item 3 above, Entergy has provided cable routing dimensional details for the circuits of concern in the submittal dated September 29, 2010. However, it should be noted that in most cases, the dimensional data provided does not relate to the separation between redundant trains, but rather the location and separation from ignition sources for a single train that presents the potential for use of the credited OMA if that train is impacted by fire damage.'' During a clarification call with the licensee, the licensee did not provide any dimensional data on train separation. Without dimensional data on train separation, the staff has conservatively assumed that there is no discernable separation between redundant trains of equipment.

In addition, the licensee noted that the introduction of combustible materials into most areas included in its request was limited via administrative procedures such as EN–DC–161. The licensee stated that since Fire Area TBL–5 did not contain safety-related systems or components, it was not addressed by this procedure. The NRC staff notes that the licensee requested OMAs for Fire Area TBL–5 area and that alternate shutdown equipment and several cables associated with normal safe-shutdown equipment are located in this area. The licensee stated that operator rounds are performed each shift in Fire Area TBL–5 that would monitor the presence of combustibles that could present an unacceptable fire safety challenge. In addition, the licensee stated that procedures OAP–017 (Plant Surveillance and Operator Rounds) and EN–MA–132 (Housekeeping) include guidance for monitoring general area cleanliness including monitoring for accumulations of combustibles. The NRC staff notes that the combustible material controls procedures for this fire area are not as robust as for safety-related areas, and therefore results in a reduction in the

defense-in-depth for the impacted fire zones.

Specific Area or Zone Discussion

Each of the fire areas or zones included in this exemption is analyzed below with regard to how the concept of defense-in-depth is achieved for each area or zone and the role of the OMAs in the overall level of safety provided for each area or zone.

3.1 Fire Area AFW–6—Auxiliary Boiler Feed Pump Room, Elevation 18′-6″ of the Auxiliary Feed Pump Building (Fire Zone 23—Auxiliary Boiler Feed Pump (ABFP) Room, Elevation 18′-6″)

3.1.1 Fire Prevention

Fire Area AFW–6 consists of a single room (the ABFP Room or the Auxiliary Feedwater (AFW) Pump Room) and is designated as Fire Zone 23. Note that the pumps which supply water to the steam generators following a reactor trip are generically known as AFW pumps, but at IP3 they are also called Auxiliary Boiler Feed Pumps. The licensee stated that the fire loading in this area is low and that fixed combustibles consist of cable insulation, small quantities of lube oil, electrical panels, and incident materials and Class A combustibles. The licensee also stated that the ignition sources in the area consist of cable runs, junction boxes, motors, pumps, and an electrical cabinet.

3.1.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 23 has an automatic, ionization smoke detection system throughout the zone that is designed and installed in accordance with National Fire Protection Association (NFPA) standard NFPA 72E—1974 edition. The licensee also stated that Fire Zone 23 has an automatic, wet-pipe fire suppression system throughout the zone that is designed and installed in accordance with NFPA 13—1983 Edition.

3.1.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 23 has a ceiling height of approximately 13′-0″ and an approximate floor area of 1,254 square feet. This fire zone contains the three AFW pumps (31, 32, and 33) and their discharge valves used to supply water to the steam generators for reactor coolant system decay heat removal when the normal feedwater system is not available, such as following a reactor trip. As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.1.4 OMAs Credited for a Fire in Fire Area AFW–6 (Fire Zone 23)

3.1.4.1 OMA #1—Locally Start 33 AFW Pump via Operation of the Bus 6A Circuit Breaker

The licensee stated that cables AK3–PT2 and JB1–PT2/2 for the 33 AFW pump are located in Fire Zone 23 in rigid steel conduit located 6.3 to 12 feet above the floor and terminating in the AFW pump control panel. In addition, the licensee stated that ignition sources in the zone located less than 20 feet horizontally from cables AK3–PT2 and JB1–PT2/2 consist of an electrical cabinet separated from the cable by approximately 12.4 feet horizontally and that there are no intervening combustibles.

The licensee also stated that cable JB1–X32/2, also for the 33 AFW pump, is located in Fire Zone 23 in rigid steel conduit that runs vertically from a junction box on the north wall for approximately 5.5 feet and then horizontally in a tray located approximately 10.8 ft above the floor, before exiting the zone through the ceiling. In addition, the licensee stated that ignition sources in the zone located less than 20 feet horizontally from cable JB1–X32/2 consist of an AFW pump motor and two electrical cabinets. According to the licensee, the AFW pump motor is separated from the cable by approximately 8.2 feet horizontally, one electrical cabinet is located approximately 5.7 feet directly below the cable, and the other electrical cabinet is separated from the cable by approximately 9.8 feet horizontally. The licensee also stated that there are no intervening combustibles.

The licensee also stated that cables LL7–X32, LQ7–X32, and X32–Y2J, also for the 33 AFW pump, are located in Fire Zone 23 in rigid steel conduit that runs from flow transmitters FC–1136S and FC–1136A–S located approximately 4.4 feet above the floor along the north wall terminating at a junction box located approximately 5 feet above the floor. In addition, the licensee stated that ignition sources in the zone located less than 20 feet horizontally from cables LL7–X32, LQ7–X32, and X32–Y2J consist of two AFW pump motors, which are separated from the cables by approximately 7 feet horizontally and that there are no intervening combustibles.

In the event that a fire occurs and a failure of the CCR control switch response or pump indication prompts operator action to investigate the breaker status at the switchgear, the licensee stated that OMA #1 is available to restore this function by starting the 33 AFW pump via local operation of the circuit breaker on Bus 6A, which is located in a different fire area. If OMA #1 becomes necessary, the licensee stated that they have assumed a 4.5 minute diagnosis period and that the required time to perform the action is 13 minutes while the time available is 30 minutes, which provides 12.5 minutes of margin.

3.1.5 Conclusion for Fire Area AFW–6 (Fire Zone 23)

The NRC staff had previously issued an exemption from III.G.2 for Fire Zone 23 in 1987 (ML003779008). In that exemption, the NRC staff found that the low fire load, the fire detection system, the automatic fire suppression system, and the distance between AFW pumps would provide reasonable assurance that one train of shutdown equipment would be available following a fire in this fire zone, including the use of OMA #1. The NRC staff concludes that OMA #1 remains acceptable for maintaining the reactor coolant system heat removal function and that the III.G.2 exemption for Fire Zone 23 remains valid.

3.2 Fire Area ETN–4{1}—Electrical Tunnels (Fire Zone 7A—Lower Electrical Tunnel, Elevation 33′-0″)

3.2.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles are cable insulation and incidental materials, and that there are no transient combustibles. The licensee also stated that the ignition sources in the area consist of cable runs.

3.2.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 7A has an area-wide ionization smoke detection system installed as well as thermal detection in the cable trays and that the systems were designed and installed in accordance with NFPA 72E, 1974 Edition. The licensee also stated that Fire Zone 7A has a dry-pipe, preaction fire suppression sprinkler system installed in the cable trays that was designed and installed in accordance with NFPA 13, 1978 Edition and NFPA 15, 1977 Edition.

3.2.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 7A has a ceiling height of approximately 16'-0'' and an approximate floor area of 6,386 square feet. As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.2.4 OMAs Credited for a Fire in Fire Area ETN–4{1} (Fire Zone 7A)

3.2.4.1 OMA #2—Swap 32 Component Cooling Water (CCW) Pump To Alternate Power Supply or Align City Water to Charging Pumps

The licensee stated that cable AS9–W1D for the 32 CCW pump is routed through Fire Zone 7A. The licensee also stated that there are no ignition sources, other than cables, located less than 20 feet horizontally from the cables. The licensee further stated that the postulated fire scenario would involve a transient combustible fire that causes a failure of the power cables to redundant CCW pumps 31 and 33.

In the event that a fire occurs and causes a loss of the CCR control or indication for all CCW pumps, the licensee stated that OMA #2 is available to restore this function by swapping the 32 CCW pump to its alternate power supply or aligning city water to cool the charging pumps. If OMA #2 becomes necessary, the licensee stated that they have assumed failure at the onset of the fire and that the required time to perform the action is 34 minutes while the time available is >60 minutes, which provides 26 minutes of margin.

3.2.4.2 OMA #3—Operate 480V Bus 3A Breaker Locally To Start 31 AFW Pump

The licensee stated that cables A15–PT2, JB1 –PT2/1, JB1 –X32/1 for the 31 AFW pump are all routed through Fire Zone 7A. The licensee also stated that there are no ignition sources, other than cables, located less than 20 feet horizontally from the cables. The licensee further stated that the postulated fire scenario would involve a transient combustible fire that causes a failure of cables serving the 31 AFW pump.

In the event that a fire occurs and causes a loss of the CCR control or indication for the 31 AFW pump, the licensee stated that OMA #3 is available to restore this function by operating a 480V bus 3A breaker locally to start the 31 AFW pump. If OMA #3 becomes necessary, the licensee stated that they have assumed a 4.5 minute diagnosis period and that the required time to perform the action is 7 minutes while the time available is 30 minutes, which provides 18.5 minutes of margin.

3.2.4.3 OMA #4—Locally Operate FCV–1121 Bypass Valve in Support of Use of 31 AFW Pump

The licensee stated that cables A15–PT2, JB1 –PT2/1, JB1 –X32/1 for the 31 AFW pump, and cable JB1 –X32/1 for valve FCV–1121, which allows recirculation flow for the 31 AFW pump, are all routed through Fire Zone 7A. The licensee also stated that there are no ignition sources, other than cables, located less than 20 feet horizontally from the cables. The licensee further stated that the postulated fire scenario would involve a transient combustible fire that causes a failure of cables serving valve FCV–1121.

In the event that a fire occurs and causes a loss of the CCR control or indication for all AFW pumps, the licensee stated that OMA #4 is available to restore recirculation flow by locally operating the bypass valve for FCV–1121 to support the use of the 31 AFW pump. If OMA #4 becomes necessary, the licensee stated that they have assumed a 4.5 minute diagnosis period and that the required time to perform the action is 7 minutes while the time available is 30 minutes, which provides 18.5 minutes of margin.

3.2.4.4 OMA #6—Align Appendix R Diesel Generator (ARDG) to 480 V Buses 2A, 3A, 5A, and 312

The licensee stated that in the event of a loss of offsite power, the use of the ARDG is credited for supplying power to the 480V buses in the event of a fire in Fire Area ETN–4{1}. In the event that a fire occurs and causes a loss of the CCR control or indication for the buses, the licensee stated that OMA #6 is available to align the ARDG to 480V buses 2A, 3A, 5A, and 312. If OMA #6 becomes necessary, the licensee stated that they have assumed a loss of offsite power at the outset of the event and that the required time to perform the action is 50 minutes while the time available is 75 minutes, which provides 25 minutes of margin. The NRC staff notes that this is equivalent to implementing an alternate safe shutdown system in accordance with III.G.3 and does not qualify for a III.G.2 exemption as requested by the licensee.

3.2.4.5 OMA #7—Swap 31 or 32 Charging Pump To Alternate Power Supply

The licensee stated that cables AH9–K1 B, AH9–PL2, and JA4–PL2/2 for the 32 charging pump are all routed through Fire Zone 7A. The licensee also stated that there are no ignition sources, other than cables, located less than 20 feet horizontally from the cables. The licensee further stated that the postulated fire scenario would involve a transient combustible fire that causes a failure of cables serving charging pumps 31 and 32.

In the event that a fire occurs and causes a loss of the CCR control or indication for all charging pumps, the licensee stated that OMA #7 is available to restore this function by swapping the 31 or 32 charging pump to its alternate power supply. If OMA #7 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 8 minutes while the time available is 75 minutes, which provides 37 minutes of margin.

3.2.4.6 OMA #8—Locally Operate FCV–405B, FCV–405D, or FCV–406B To Control AFW Flow to Steam Generators

The licensee stated that cables JB1–SX1/1, JF5–KV4, JF5–LL8, K45–YM3, and K47–YM3 for valve FCV–406B, which controls the flow from the 32 AFW pump to the 34 steam generator (SG), are all routed through Fire Zone 7A. The licensee also stated that there are no ignition sources, other than cables, located less than 20 feet horizontally from the cables. The licensee further stated that the postulated fire scenario would involve a transient combustible fire that causes a failure of cables serving the AFW pumps and valves.

In the event that a fire occurs and causes a loss of the CCR control or indication for all AFW flow control valves, the licensee stated that OMA #8 is available to restore this function by locally operating FCV–405B, FCV–405D, or FCV–406B to control AFW flow to the steam generators. If OMA #8 becomes necessary, the licensee stated that they have assumed a 4.5-minute diagnosis period and that the required time to perform the action is 17 minutes while the time available is 30 minutes, which provides 8.5 minutes of margin.

3.2.5 Conclusion for Fire Area ETN–4{1} (Fire Zone 7A)

The NRC staff had previously issued exemptions for Fire Zone 7A in 1987 (ML003779008) and in 1984 (ML003779284). In those exemptions, the NRC staff found that the fire detection system, the automatic fire suppression system, and the distance between redundant trains would provide reasonable assurance that one train of shutdown equipment would be available following a fire in this fire zone. The NRC staff finds the defense-in-depth features in this fire zone and the available time margin would allow the use of OMAs #2, 3, 4, and 7. However, based on new information in the current submittal the NRC staff finds that OMA #6 is equivalent to implementing an alternate safe shutdown system in accordance with III.G.3 and does not qualify for a III.G.2 exemption as requested by the licensee.

Also, OMA #8 has insufficient available time margin to allow for reliable performance considering the potential variables as discussed in NUREG–1852. Therefore, the NRC staff finds that an exemption from III.G.2 based on these OMAs cannot be granted for Fire Zone 7A.

3.3 Fire Area ETN–4{1}—Electrical Tunnels (Fire Zone 60A—Upper Electrical Tunnel, Elevation 43′-0″)

3.3.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles are cable and incidental materials and that there are no transient combustibles. The licensee also stated that the ignition sources in the area consist of cables.

3.3.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 60A has an area-wide, automatic ionization smoke detection system installed that was designed and installed in accordance with NFPA 72E, 1974 Edition. The licensee also stated that Fire Zone 60A has a dry-pipe, preaction sprinkler fire suppression system installed in the cable trays that was designed and installed in accordance with NFPA 13, 1978 Edition and NFPA 15, 1977 Edition.

3.3.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 60A has a ceiling height of approximately 10′-0″ and an approximate floor area of 3,200 square feet. The licensee stated that cables and JB1–S99, JB1–X02, JB1–X02/1, and JB1–SZ6 for valves PCV–1310A and PCV–1310B (steam supply to the 32 AFW pump), DE1–XV2 for 38 SW strainer, JB1–TA5 for valve HCV–1118 (governor valve for the 32 AFW pump), AQ3–K1C, AQ3–PL2, JA2–PL2/1 for 31 charging pump, JB1–KV6 for valve FCV–405B (32 AFW pump to 32 SG), JB1–KV8 for valve FCV–405D (32 AFW pump to 34 SG), JB5–X1J for valve HCV–142 (charging pump discharge to RCS loops), DD4–JB5 for valve LCV–112C (volume control tank to charging pump suction), JB1–PT2/3 for valve PCV–1139 (steam supply to the 32 AFW pump), JB1–SX1/1, JF5–KV4, K45–YM3, K47–YM3, and JF5–LL8 for valve FCV–406B (31 AFW pump to the 32 SG) are all routed through Fire Zone 60A. The licensee also stated that there are no ignition sources, other than cables, located less than 20 feet horizontally from the cables. The licensee further stated that no cables associated with the 31 AFW pump, its flow control valves (FCV–406A to 31 SG, FCV–406B to 32 SG), or its power source (Bus 3A) are routed through this fire area but that the protected instrumentation credited in this fire area for monitoring steam generator (SG) level is the instrumentation for the 33 SG and 34 SG, which would make the 31 AFW pump an unsuitable choice if all level instrumentation for 31 and 32 SG has been rendered inoperable by fire damage. The licensee also stated that the anticipated fire is a slow developing cable fire located in the cable trays. The licensee also stated that Conduit 1VA/JA (source range flux N31 instrumentation) is protected with fire barrier wrap from penetration H–20 in Fire Zone 73A through the upper electrical tunnel. As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.3.4 OMAs Credited for a Fire in Fire Area ETN–4{1} (Fire Zone 60A)

3.3.4.1 OMA #5—Operate HCV–1118 Manually To Control 32 AFW Pump

In the event that a fire occurs and causes a loss of the CCR control or indication for all AFW pumps, the licensee stated that OMA #5 is available to restore this function by manually operating HCV–1118 to control the 32 AFW pump. If OMA #5 becomes necessary, the licensee stated that they have assumed a 4.5-minute diagnosis period following the failure and that the required time to perform the action is 17 minutes while the time available is 30 minutes, which provides 8.5 minutes of margin.

3.3.4.2 OMA #6—Align Appendix R Diesel Generator to 480 V Buses 2A, 3A, 5A, and 312

The licensee stated that in the event of a loss of offsite power, the use of the ARDG is credited for supplying power to the 480V buses in the event of a fire in Fire Area ETN–4{1}. In the event that a fire occurs and causes a loss of the CCR control or indication for the buses, the licensee stated that OMA #6 is available to align the ARDG to 480V buses 2A, 3A, 5A, and 312. If OMA #6 becomes necessary, the licensee stated that they have assumed a loss of offsite power at the outset of the event and that the required time to perform the action is 50 minutes while the time available is 75 minutes, which provides 25 minutes of margin. The NRC staff notes that this is equivalent to implementing an alternate safe shutdown system in accordance with III.G.3 and does not qualify for a III.G.2 exemption as requested by the licensee.

3.3.4.3 OMA #7—Swap 31 or 32 Charging Pump To Alternate Power Supply

In the event that a fire occurs and causes a loss of the CCR control or indication for all charging pumps, the licensee stated that OMA #7 is available to restore this function by swapping the 31 or 32 charging pump to its alternate power supply. If OMA #7 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 8 minutes while the time available is 75 minutes, which provides 37 minutes of margin.

3.3.4.4 OMA #8—Locally Operate FCV–405B, FCV–405D, or FCV–406B To Control AFW Flow to Steam Generators

In the event that a fire occurs and causes a loss of the CCR control or indication for all AFW flow control valves, the licensee stated that OMA #8 is available to restore this function by locally operating FCV–405B, FCV–405D, or FCV–406B to control AFW flow to the SGs. If OMA #8 becomes necessary, the licensee stated that they have assumed a 4.5-minute diagnosis period and that the required time to perform the action is 17 minutes while the time available is 30 minutes, which provides 8.5 minutes of margin.

3.3.4.5 OMA #9—Locally Open Valve 227 To Establish Charging Makeup Flowpath to RCS

The licensee stated that OMA #9 is only required if normal flowpath valve HCV–142 fails closed and that spurious isolation of the charging makeup path to the RCS is identified in the CCR by operators confirming that a charging pump is in operation, but pressurizer level is decreasing, or pressurizer level channels are nonfunctional or erratic in operation. The licensee also stated that the anticipated fire is a slow developing cable fire located in the cable trays.

In the event that a fire occurs and causes the normal flowpath valve HCV–142 to close, the licensee stated that OMA #9 is available to restore this function by locally opening bypass valve 227 to establish the charging makeup flowpath to the RCS. If OMA #9 becomes necessary, the licensee stated that they have assumed a 60-minute period before re-entering the fire area, a 30-minute diagnosis period, which is assumed to transpire during the 60-minute waiting period and that the required time to perform the action is 9 minutes while the time available is 75

minutes, which provides 6 minutes of margin.

3.3.4.6 OMA #10—Locally Close Valve LCV–112C and Open Valve 288 To Align Charging Pump Suction to RWST

The licensee stated that preemptive steps in procedure 3–ONOP–FP–1, ''Plant Fires,'' for a fire scenario will trigger action via 3–AOP–SSD–1, ''Control Room Inaccessibility Safe Shutdown Control,'' to locally verify the charging pump suction path and perform the stated OMA prior to starting a charging pump. 3–AOP–CVCS–1, ''Chemical And Volume Control System Malfunctions,'' provides guidance to be followed in the event that a swap of the charging pump suction to the RWST cannot be confirmed (i.e., loss of CCR indication for valves LCV–112C [volume control tank to charging pump suction] or LCV–112B [refueling water storage tank to charging pump suction]), which will also trigger the OMA. The licensee also stated that the anticipated fire is a slow developing cable fire located in the cable trays.

In the event that a fire occurs and causes a loss of the CCR control or indication for valves LCV–112C or LCV–112B, the licensee stated that OMA #10 is available to restore this function by locally closing valve LCV–112C and opening valve 288 to align the charging pump suction to the RWST. If OMA #10 becomes necessary, the licensee stated that they have assumed a 60-minute period before re-entering the fire area, a 30-minute diagnosis period, which is assumed to transpire during the 60-minute waiting period and that the required time to perform the action is 11 minutes while the time available is 75 minutes, which provides 4 minutes of margin.

3.3.4.7 OMA #11—Locally Operate PCV–1139 To Ensure Steam Supply to 32 AFW Pump

The licensee stated that OMA #11 is only required if 32 AFW pump is selected as the credited pump and other OMAs related to the 31 AFW pump are unsuccessful. The licensee also stated that the anticipated fire is a slow developing cable fire located in the cable trays.

In the event that a fire occurs and causes a loss of AFW flow indication, loss of AFW pump, or loss of PCV–1139 indication from the CCR, the licensee stated that OMA #11 is available to restore this function by locally operating PCV–1139 to ensure a steam supply to the 32 AFW pump. If OMA #11 becomes necessary, the licensee stated that they have assumed a 4.5-minute diagnosis period and that the required time to perform the action is 17 minutes while the time available is 30 minutes, which provides 8.5 minutes of margin.

3.3.4.8 OMA #12—Locally Operate PCV–1310A and PCV–1310B To Ensure Steam Supply to 32 AFW Pump

The licensee stated that OMA #12 is only required if the 32 AFW pump is selected as the credited pump. The licensee also stated that the anticipated fire is a slow developing cable fire located in the cable trays.

In the event that a fire occurs and causes a loss of steam supply as diagnosed during local operation of the 32 AFW pump, the licensee stated that OMA #12 is available to restore this function by locally operating PCV–1310A and 1310B to ensure a steam supply to the 32 AFW pump. If OMA #12 becomes necessary, the licensee stated that they have assumed a 4.5-minute diagnosis period and that the required time to perform the action is 17 minutes while the time available is 30 minutes, which provides 8.5 minutes of margin.

3.3.4.9 OMA #13—Locally Manually Perform SW Pump Strainer Backwash, as Required

In an inspection report dated July 11, 2011 (ML111920339), NRC inspectors identified that this OMA was inappropriate because it was too complex and beyond the limited scope of an OMA to achieve and maintain post-fire hot shutdown. Therefore, the NRC staff finds that it is inappropriate to approve this OMA.

3.3.5 Conclusion for Fire Area ETN–4{1} (Fire Zone 60A)

The NRC staff had previously issued exemptions for Fire Zone 60A in 1987 (ML003779008) and in 1984 (ML003779284). In those exemptions, the NRC staff found that the fire detection system, the automatic fire suppression system, and the distance between redundant trains would provide reasonable assurance that one train of shutdown equipment would be available following a fire in this fire zone. The NRC staff finds the defense-in-depth features in this fire zone and the available time margin would allow the use of OMA #7. However, based on new information in the current submittal the NRC staff finds that OMA #6 is equivalent to implementing an alternate safe shutdown system in accordance with III.G.3 and does not qualify for a III.G.2 exemption as requested by the licensee. Also, the previous exemption requests did not mention that OMA #13, SW pump strainer backwash, was needed for the safe shutdown of the plant. Based on the discussion in section 3.3.4.9, the NRC staff finds it inappropriate to approve OMA #13. Also, OMAs #5, 8, 9, 10, 11, and 12 have insufficient available time margin to allow for reliable performance considering the potential variables as discussed in NUREG–1852. Therefore, the NRC staff finds that an exemption from III.G.2 based on these OMAs cannot be granted for Fire Zone 60A.

3.4 Fire Area ETN–4{3}—Electrical Tunnels (Fire Zone 73A—Upper Electrical Penetration Area, Elevation 46′-0″)

3.4.1 Fire Prevention

The licensee stated that the fire loading in this area is moderate and that the fixed combustibles are cable insulation and incidental materials and that there are no transient combustibles. The licensee also stated that the ignition sources in the area consist of cables, junction boxes, electrical cabinets, and a transformer.

3.4.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 73A has an area-wide, automatic ionization smoke detection system installed that was designed and installed in accordance with NFPA 72E, 1974 Edition. The licensee also stated that Fire Zone 73A has a dry-pipe, preaction sprinkler fire suppression system installed in the cable trays that was designed and installed in accordance with NFPA 13, 1978 Edition and NFPA 15, 1977 Edition.

3.4.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 73A has a ceiling height of approximately 17′-0Prime; and an approximate floor area of 1,350 square feet. As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.4.4 OMAs Credited for a Fire in Fire Area ETN–4{3} (Fire Zone 73A)

3.4.4.1 OMA #14—Operate HCV–1118 Manually To Control 32 AFW Pump

The licensee stated that cable JBI–TA5 for valve HCV–1118 is located in Fire Zone 73A in a cable tray located approximately 13 to 14 feet above the floor. The licensee also stated that ignition sources located less than 20 feet horizontally from the cable consist of cables and eight electrical cabinets. According to the licensee, two of the electrical cabinets are separated from the cable by approximately 5.7 to 6.7

feet vertically and the remaining electrical cabinets are separated from the cable by approximately 5.3 feet horizontally. The licensee further stated that no cables associated with the 31 AFW pump, its flow control valves (FCV–406A, FCV–406B), or its power source (Bus 3A) are routed through this fire area, but that the protected instrumentation credited in this fire area for monitoring SG level is the instrumentation for the 33 SG and the 34 SG, which would make the 31 AFW pump an unsuitable choice if all level instrumentation for 31 and 32 SG has been rendered inoperable by fire damage. The licensee also stated that the anticipated fire is a slow developing cable fire located in the cable trays.

In the event that a fire occurs and causes a loss of the CCR control or indication for all AFW pumps, the licensee stated that OMA #14 is available to restore this function by manually operating HCV–1118 to control the 32 AFW pump. If OMA #14 becomes necessary, the licensee stated that they have assumed a 4.5-minute diagnosis period and that the required time to perform the action is 17 minutes while the time available is 30 minutes, which provides 8.5 minutes of margin.

3.4.4.2 OMA #15—Locally Operate PCV–1139 To Ensure Steam Supply to 32 AFW Pump

The licensee stated that cable JB1–PT2/3 for valve PCV–1139 is located in Fire Zone 73A in a cable tray located approximately 13 to 14 feet above the floor. The licensee also stated that ignition sources located less than 20 feet horizontally from the cable consist of cables and eight electrical cabinets. According to the licensee, two of the electrical cabinets are separated from the cable by approximately 5.7 to 6.7 feet vertically and the remaining electrical cabinets are separated from the cable by approximately 5.3 feet horizontally. The licensee further stated that OMA #15 is only required if 32 AFW pump is selected as the credited pump and other OMAs related to the 31 AFW pump are unsuccessful. The licensee also stated that the anticipated fire is a slow developing cable fire located in the cable trays.

In the event that a fire occurs and causes a loss of AFW flow indication, loss of AFW pump, or loss of PCV–1139 indication from the CCR, the licensee stated that OMA #15 is available to restore this function by locally operating PCV–1139 to ensure steam supply to the 32 AFW pump. If OMA #15 becomes necessary, the licensee stated that they have assumed a 4.5-minute diagnosis period and that the required time to perform the action is 17 minutes while the time available is 30 minutes, which provides 8.5 minutes of margin.

3.4.4.3 OMA #16—Locally Operates PCV–1310A and PCV–1310B To Ensure Steam Supply to 32 AFW Pump

The licensee stated that cables JB1–X02 and JB1–S99 for valves PCV–1310A and PCV–1310B are located in Fire Zone 73A. The licensee also stated that ignition sources located less than 20 feet horizontally from the cables consist of cables and eight electrical cabinets. According to the licensee, two of the electrical cabinets are separated from the cables by approximately 5.7 to 6.7 feet vertically and the remaining electrical cabinets are separated from the cables by approximately 5.3 feet horizontally.

The licensee also stated that cables JB1–XO2/1 and JB1–SZ6 for valves PCV–1310A and PCV–1310B are located in Fire Zone 73A in a cable tray located approximately 13 feet above the floor. The licensee also stated that ignition sources located less than 20 feet horizontally from the cables consist of cables and eight electrical cabinets. According to the licensee, three of the electrical cabinets are separated from the cables by at least 4 feet vertically, two electrical cabinets are separated from the cables by approximately 2.3 feet horizontally and 2.3 feet vertically, and the remaining three electrical cabinets are separated from the cables by approximately 10.2 feet horizontally. The licensee further stated that OMA #16 is only required if the 32 AFW pump is selected as the credited pump. The licensee also stated that the anticipated fire is a slow developing cable fire located in the cable trays.

In the event that a fire occurs and causes a loss of steam supply as diagnosed during local operation of the 32 AFW pump, the licensee stated that OMA #16 is available to restore this function by locally operating PCV–1310A and 1310B to ensure steam supply to the 32 AFW pump. If OMA #16 becomes necessary, the licensee stated that they have assumed a 4.5-minute diagnosis period and that the required time to perform the action is 17 minutes while the time available is 30 minutes, which provides 8.5 minutes of margin.

3.4.4.4 OMA #17—Locally Operate FCV–405B, FCV–405D, or FCV–406B To Control AFW Flow to Steam Generators

The licensee stated that cables JB1–KV8 and JB1–KV7 for valves FCV–405C and FCV–405D are located in Fire Zone 73A in a cable tray located approximately 13 to 14 feet above the floor. The licensee also stated that ignition sources located less than 20 feet horizontally from the cables consist of cables and eight electrical cabinets. According to the licensee, two of the electrical cabinets are separated from the cables by approximately 5.7 to 6.7 feet vertically and the remaining electrical cabinets are separated from the cables by approximately 5.3 feet horizontally. The licensee further stated that the postulated fire scenario would involve a fire that causes damage to the cables serving the AFW FCVs in the area.

In the event that a fire occurs and causes a loss of the CCR control or indication for all AFW flow control valves, the licensee stated that OMA #17 is available to restore this function by locally operating FCV–405B, FCV–405D, or FCV–406B to control AFW flow to the steam generators. If OMA #17 becomes necessary, the licensee stated that they have assumed a 4.5-minute diagnosis period and that the required time to perform the action is 17 minutes while the time available is 30 minutes, which provides 8.5 minutes of margin.

3.4.5 Conclusion for Fire Area ETN–4{3} (Fire Zone 73A)

The NRC staff had previously issued exemptions for Fire Zone 73A in 1987 (ML003779008) and in 1984 (ML003779284). In those exemptions, the NRC staff found that the fire detection system, the automatic fire suppression system, the distance between redundant trains, and the use of the alternate safe shutdown system would provide reasonable assurance that one train of shutdown equipment would be available following a fire in this fire zone. In the current exemption request the licensee did not credit the alternate safe shutdown system, but instead proposed certain OMAs. The NRC staff finds that OMAs #14, 15, 16, and 17 have insufficient available time margin to allow for reliable performance considering the potential variables as discussed in NUREG–1852. Therefore, the NRC staff finds that an exemption from III.G.2 based on these OMAs cannot be granted for Fire Zone 73A.

3.5 Fire Area PAB–2{3}—Primary Auxiliary Building (Fire Zone 6—32 Charging Pump Room, Elevation 55′-0″)

3.5.1 Fire Prevention

The licensee stated that the fire loading in this area is moderate and that the fixed combustibles are cable insulation, lube oil, and incidental materials and that transient combustibles consist of lube oil, solvent, grease, cleaning materials, wood, anti-

contamination clothing (anti-C's), and plastic. The licensee also stated that the ignition sources in the area consist of cables, a junction box, an electrical cabinet, a motor, and a pump.

3.5.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 6 has an area-wide, automatic ionization smoke detection system installed that was designed and installed in accordance with NFPA 72E, 1974 Edition but that Fire Zone 6 does not have an automatic fire suppression system installed.

3.5.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 6 has a ceiling height of approximately 16′-0″ and an approximate floor area of 288 square feet. As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.5.4 OMAs Credited for a Fire in Fire Area PAB–2{3} (Fire Zone 6)

3.5.4.1 OMA #18—Locally Close LCV–112C and Open Valve 288 To Align Charging Pump Suction Path to RWST

The licensee stated that cable DD4–VN3 for valve LCV–112C is located in Fire Zone 6 in conduit located approximately 14 feet above the floor and terminates at LCV–112B, which is located approximately 7.5 feet above the floor. The licensee also stated that ignition sources located less than 20 feet horizontally from the cable consist of cables, the charging pump motor, and a transfer switch. According to the licensee, the motor is separated from the cable by approximately 13.8 feet horizontally and the transfer switch is separated from the cable by approximately 16 feet horizontally.

The licensee also stated that cable DD4–VN3 is an interlock cable that interfaces with RWST outlet valve LCV–112B and that fire-induced failures of this cable could cause the spurious closure of LCV–112C. In addition, the licensee stated that preemptive steps in 3–ONOP–FP–1 to secure the 31 and 32 charging pumps early in the fire scenario will trigger action via 3–AOP–SSD–1 to locally verify charging pump suction path and perform OMA #18 prior to starting a charging pump. 3–AOP–CVCS–1 provides guidance to be followed in the event that the swap of charging pump suction to the RWST cannot be confirmed (i.e., loss of CCR indication for valves LCV–112C or LCV–112B), which will also trigger OMA #18.

In the event that a fire occurs and causes a loss of the CCR control or indication for valves LCV–112C or LCV–112B, the licensee stated that OMA #18 is available to restore this function by locally closing LCV–112C and opening valve 288 to align the charging pump suction path to RWST. If OMA #18 becomes necessary, the licensee stated that they have assumed a 60-minute period before re-entering the fire area, an 11-minute diagnosis period, which is assumed to transpire during the 60-minute waiting period, and that the required time to perform the action is 11 minutes while the time available is 75 minutes, which provides 4 minutes of margin.

3.5.5 Conclusion for Fire Area PAB–2{3} (Fire Zone 6)

Although there is 4 minutes of margin available for OMA #18, Fire Zone 6 has moderate combustible loading, lacks automatic fire suppression, and the licensee did not provide details regarding any discernable separation between the credited and redundant equipment so it is not clear that at least one train of equipment would remain free of fire damage during or following a fire event. The NRC staff finds that OMA #18 has insufficient available time margin to allow for reliable performance considering the potential variables as discussed in NUREG–1852. Therefore, the NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 6 and finds that OMA #18 is unacceptable for the purpose of providing the level of protection intended by the regulation and that an exemption from III.G.2 based on OMA #18 cannot be granted for Fire Zone 6.

3.6 Fire Area PAB–2{5}—Primary Auxiliary Building (Fire Zone 17A—Elevation 55′-0′, PAB Corridor)

3.6.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles are cable insulation, incidental materials, cellulose, resin, hydrogen, rubber, and plastic and that transient combustibles consist of solvent, lube oil, cleaning materials, grease, paper, wood, anti-C's, and plastic. The licensee also stated that the ignition sources in the area consist of cables, junction boxes, motor control centers (MCCs), transformers, a water heater, lighting power supply, an instrument panel, and electrical cabinets.

3.6.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 17A has ionization smoke detectors installed in the under-floor area at MCC Nos. 36A, 36B, and 37 and ultraviolet detectors in the MCC area but that Fire Zone 17A does not have an automatic fire suppression system installed. The licensee also stated that the fire detection systems were designed and installed in accordance with NFPA 72E, 1974 Edition.

3.6.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 17A has a ceiling height of approximately 16′-0″ and an approximate floor area of 6,386 square feet. The licensee also stated that there are fire barriers, in the form of marinate boards, installed over the cable trays.

The licensee stated that cable DD4–VN3 for valve LCV–112C is located in Fire Zone 17A in a tray located approximately 14 feet above the floor. The licensee also stated that ignition sources located less than 20 feet horizontally from the cable consist of cables, MCC panels, lighting power panels, electrical cabinets, and instrument panels. According to the licensee, the MCCs and lighting power panels are separated from the cable by approximately 7.4 feet horizontally, three electrical cabinets are located under the cable separated by approximately 3.5 feet vertically, and the rest of the electrical cabinets are separated from the cabinet by approximately 5.6 feet horizontally. The licensee also stated that cable DD4–VN3 is an interlock cable that interfaces with RWST outlet valve LCV–112B and that fire-induced failures of this cable could cause the spurious closure of LCV–112C.

The licensee also stated that cables DD4–VN5/1 and DD4–VN5/2 for valve LCV–112C are located in Fire Zone 17A in a tray located approximately 14 feet above the floor. The licensee also stated that ignition sources located less than 20 feet horizontally from the cable consist of cables, MCC panels, lighting power panels, electrical cabinets, and instrument panels. According to the licensee, the MCCs and lighting power panels are separated from the cables by approximately 7.4 feet horizontally, three electrical cabinets are located under the cables separated by approximately 3.5 feet vertically, and the rest of the electrical cabinets are separated from the cables by approximately 5.6 to 10 feet horizontally.

The licensee also stated that cables AH9–PL2 and JA4–PL2/2 for the 32 charging pump are located in Fire Zone 17A in a tray located approximately 10 to 12 feet above the floor. The licensee also stated that ignition sources located less than 20 feet horizontally from the cable consist of cables, an instrument panel, 21 electrical cabinets, and one dry transformer. According to the licensee, the instrument panel and 12 of the electrical cabinets are located under the cables separated from the cables by approximately 4.2 feet vertically, the remaining 9 electrical cabinets are separated from the cables by approximately 4.2 feet horizontally, and the dry transformer is separated from the cables by approximately 15.8 feet horizontally.

As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.6.4 OMAs Credited for a Fire in Fire Area PAB–2{5} (Fire Zone 17A)

3.6.4.1 OMA #19—Locally Close Supply Breaker for 32 Charging Pump

In the event that a fire occurs and causes a failure of the CCR control switch response, or indicating lights prompt operators to investigate breaker status at the switchgear, the licensee stated that OMA #19 is available to restore this function by locally closing the supply breaker for the 32 charging pump. The supply breaker is located in a different fire area. If OMA #19 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 7 minutes while the time available is 75 minutes, which provides 38 minutes of margin.

3.6.4.2 OMA #20—Locally Control 32 Charging Pump Using Scoop Tube Positioner

In the event that a fire occurs and causes damage to the cables serving both the 31 and 32 charging pumps or causes a loss of CCR pump control or pump status indication, the licensee stated that OMA #20 is available to restore this function by locally controlling the 32 charging pump using the scoop tube positioner. If OMA #20 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 9 minutes while the time available is 75 minutes, which provides 36 minutes of margin.

3.6.4.3 OMA #22—Locally Close LCV–112C and Open Bypass Valve 288 To Establish Flowpath From RWST to Charging Pump Suction

The licensee stated that preemptive steps in procedure 3–ONOP–FP–1 to secure the 31 and 32 charging pumps early in the fire scenario will trigger action via 3–AOP–SSD–1 to locally verify charging pump suction path and perform OMA #22 prior to starting a charging pump. 3–AOP–CVCS–1 provides guidance to be followed in the event that swap of charging pump suction to RWST cannot be confirmed (i.e., loss of CCR indication for valves LCV–112C or LCV–112B), which will also trigger OMA #22.

In the event that a fire occurs and causes a loss of the CCR control or indication for valves LCV–112C or LCV–112B, the licensee stated that OMA #22 is available to restore this function by locally closing LCV–112C and open bypass valve 288 to establish a flowpath from the RWST to the charging pump suction. If OMA #22 becomes necessary, the licensee stated that they have assumed a 60-minute period before re-entering the fire area, a 30-minute diagnosis period, which is assumed to transpire during the 60-minute waiting period and that the required time to perform the action is 11 minutes while the time available is 75 minutes, which provides 4 minutes of margin.

3.6.5 Conclusion for Fire Area PAB–2{5} (Fire Zone 17A)

There are 38 minutes of margin and 36 minutes of margin available for OMAs #19 and #20, respectively, automatic fire detection systems installed, and these two particular OMAs have sufficient time margin available. The staff finds that there is adequate defense-in-depth to support the use of OMAs #19 and #20 for Fire Zone 17A and that OMAs #19 and #20 are acceptable for this fire zone.

Although there is 4 minutes of margin available for OMA #22, Fire Zone 17A lacks automatic fire suppression, and the licensee did not provide details regarding any discernable separation between the credited and redundant equipment so it is not clear that at least one train of equipment would remain free of fire damage during or following a fire event. The NRC staff finds that OMA #22 has insufficient available time margin to allow for reliable performance considering the potential variables as discussed in NUREG–1852. Therefore, the NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 17A and finds that an exemption from III.G.2 based on OMA #22 cannot be granted for Fire Zone 17A. The NRC previously granted an exemption for Fire Zone 17A dated January 7, 1987 (ML003779008), but that exemption also credited the use of the IP3 alternate safe shutdown system. The IP3 alternate safe shutdown system was not evaluated here as the licensee only requested consideration for the OMAs.

3.7 Fire Area PAB–2{5}—Primary Auxiliary Building (Fire Zone 19A—Waste Evaporator Room, Elevation 55′-0″)

3.7.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles are cable insulation and incidental materials and that transient combustibles consist of wood, anti-C's, and plastic. The licensee also stated that the ignition sources in the area consist of cables, a junction box, transformers, and electrical cabinets.

3.7.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 19A does not have a fire detection or automatic fire suppression system installed.

3.7.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 19A has a ceiling height of approximately 16′-0″ and an approximate floor area of 602 square feet. The licensee stated that cables AH9–PL2 and JA4–PL2/2 for the 32 charging pump are located in Fire Zone 19A in conduit located approximately 10 to 12 feet above the floor. The licensee also stated that ignition sources located less than 20 feet horizontally from the cable consist of cables, an instrument panel, 21 electrical cabinets, and a dry transformer. According to the licensee, the instrument panel and 12 of the electrical cabinets are located under the cables separated from the cables by approximately 4.2 feet vertically, the remaining 9 electrical cabinets are separated from the cables by approximately 4.2 feet horizontally, and the dry transformer is separated from the cables by approximately 15.8 feet horizontally.

As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.7.4 OMAs Credited for a Fire in Fire Area PAB–2{5} (Fire Zone 19A)

3.7.4.1 OMA #19—Locally Close Supply Breaker for 32 Charging Pump

In the event that a fire occurs and causes a failure of the CCR control switch response or indicating lights prompt operators to investigate breaker status at the switchgear, the licensee stated that OMA #19 is available to restore this function by locally closing the supply breaker for the 32 charging pump. The supply breaker is located in a different fire area. If OMA #19 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 7 minutes while the time available is 75 minutes, which provides 38 minutes of margin.

3.7.4.2 OMA #20—Locally Control 32 Charging Pump Using Scoop Tube Positioner

In the event that a fire occurs and causes damage to the cables serving both the 31 and 32 charging pumps or causes a loss of CCR pump control or pump status indication, the licensee stated that OMA #20 is available to restore this function by locally controlling the 32 charging pump using the scoop tube positioner. If OMA #20 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 9 minutes while the time available is 75 minutes, which provides 36 minutes of margin.

3.7.5 Conclusion for Fire Area PAB–2{5} (Fire Zone 19A)

Although there is 38 minutes of margin and 36 minutes of margin available for OMAs #19 and #20, respectively, Fire Zone 19A lacks fire detection and automatic suppression systems and the licensee did not provide details regarding any discernable separation between the credited and redundant equipment and clear and direct procedures that instruct operators to proactively perform the OMAs, so it is not clear that at least one train of equipment would remain free of fire damage during or following a fire event. Therefore, the NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 19A and finds that an exemption from III.G.2 based on OMAs #19 and #20 cannot be granted for Fire Zone 19A.

3.8 Fire Area PAB–2{5}—Primary Auxiliary Building (Fire Zone 20A—Sample Room, Elevation 55′-0″)

3.8.1 Fire Prevention

The licensee stated that the fire loading in this area is moderate and that the fixed combustibles are cable insulation and incidental materials and that transient combustibles consist of wood, solvent, cleaning materials, anti-C's, and plastic. The licensee also stated that the ignition sources in the area consist of cables and junction boxes.

3.8.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 20A does not have a fire detection or automatic suppression system installed.

3.8.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 20A has a ceiling height of approximately 14′-6″ and an approximate floor area of 210 square feet. As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.8.4 OMAs Credited for a Fire in Fire Area PAB–2{5} (Fire Zone 20A)

3.8.4.1 OMA #22—Locally Close LCV–112C and Open Bypass Valve 288 To Establish Flowpath From RWST to Charging Pump Suction

The licensee did not describe which SSD cables are routed through Fire Zone 20A. The licensee stated that preemptive steps in procedure 3–ONOP–FP–1 to secure the 31 and 32 charging pumps early in the fire scenario will trigger action via 3–AOP–SSD–1 to locally verify charging pump suction path and perform OMA #22 prior to starting a charging pump. 3–AOP–CVCS–1 provides guidance to be followed in the event that swap of charging pump suction to RWST cannot be confirmed (i.e., loss of CCR indication for valves LCV–112C or LCV–112B), which will also trigger OMA #22.

In the event that a fire occurs and causes a loss of the CCR control or indication for valves LCV–112C or LCV–112B, the licensee stated that OMA #22 is available to restore this function by locally closing LCV–112C and open bypass valve 288 to establish a flowpath from the RWST to the charging pump suction. If OMA #22 becomes necessary, the licensee stated that they have assumed a 60-minute period before re-entering the fire area, a 30-minute diagnosis period, which is assumed to transpire during the 60-minute waiting period and that the required time to perform the action is 11 minutes while the time available is 75 minutes, which provides 4 minutes of margin.

3.8.5 Conclusion for Fire Area PAB–2 (Fire Zone 20A)

Although there is 4 minutes of margin available for OMA #22, Fire Zone 20A lacks automatic fire detection and suppression systems and the licensee did not provide details regarding any discernible separation between the credited and redundant equipment so it is not clear that at least one train of equipment would remain free of fire damage during or following a fire event. The NRC staff finds that OMA #22 has insufficient available time margin to allow for reliable performance considering the potential variables as discussed in NUREG–1852. Therefore, the NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 20A and finds that an exemption from III.G.2 based on OMA #22 cannot be granted for Fire Zone 20A.

3.9 Fire Area PAB–2{5}—Primary Auxiliary Building (Fire Zone 27A—Elevation 73′-0″ PAB Corridor)

3.9.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles are cable insulation, incidental materials, cellulose, plastic, and a flammable liquid locker and that transient combustibles consist of lube oil, grease, paper, wood, solvent, cleaning materials, anti-C's, and plastic. The licensee also stated that the ignition sources in the area consist of cables, a transformer, a water heater, and junction boxes.

3.9.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 27A does not have a fire detection or automatic suppression system installed.

3.9.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 27A has a ceiling height of approximately 15′-6″ and an approximate floor area of 5,532 square feet. The licensee stated that cables DD4–VN5/1 and DD4–VN5/2 for valve LCV–112C are located in Fire Zone 27A in a conduit or tray located approximately 12 feet above the floor. The licensee also stated that ignition sources located less than 20 feet horizontally from the cable consist of cables, electrical cabinets, and a dry transformer. According to the licensee, one of the electrical cabinets is located

under the cables separated from the cables by approximately 6.8 feet vertically, the remaining electrical cabinets are separated from the cables by approximately 11.9 feet horizontally, and the dry transformer is located under the cables separated from the cables by approximately 3.5 feet vertically. As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.9.4 OMAs Credited for a Fire in Fire Area PAB–2{5} (Fire Zone 27A)

3.9.4.1 OMA #22—Locally Close LCV–112C and Open Bypass Valve 288 To Establish Flowpath From RWST to Charging Pump Suction

The licensee stated that preemptive steps in procedure 3–ONOP–FP–1 to secure the 31 and 32 charging pumps early in the fire scenario will trigger action via 3–AOP–SSD–1 to locally verify charging pump suction path and perform OMA #22 prior to starting a charging pump. 3–AOP–CVCS–1 provides guidance to be followed in the event that swap of charging pump suction to RWST cannot be confirmed (i.e., loss of CCR indication for valves LCV–112C or LCV–112B), which will also trigger OMA #22.

In the event that a fire occurs and causes a loss of the CCR control or indication for valves LCV–112C or LCV–112B, the licensee stated that OMA #22 is available to restore this function by locally closing LCV–112C and open bypass valve 288 to establish a flowpath from the RWST to the charging pump suction. If OMA #22 becomes necessary, the licensee stated that they have assumed a 60-minute period before re-entering the fire area, a 30-minute diagnosis period, which is assumed to transpire during the 60-minute waiting period and that the required time to perform the action is 11 minutes while the time available is 75 minutes, which provides 4 minutes of margin.

3.9.5 Conclusion for Fire Area PAB–2{5} (Fire Zone 27A)

Although there is 4 minutes of margin available for OMA #22, Fire Zone 27A lacks fire detection and automatic suppression systems and the licensee did not provide details regarding any discernable separation between the credited and redundant equipment so it is not clear that at least one train of equipment would remain free of fire damage during or following a fire event. The NRC staff finds that OMA #22 has insufficient available time margin to allow for reliable performance considering the potential variables as discussed in NUREG–1852. Therefore, the NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 27A and finds that an exemption from III.G.2 based on OMA #22 cannot be granted for Fire Zone 27A.

3.10 Fire Area PAB–2{5}—Primary Auxiliary Building (Fire Zone 30A—Valve Corridor, Elevation 73′-0″)

3.10.1 Fire Prevention

The licensee stated that the fire loading in this area is moderate and that the fixed combustibles are cable insulation and incidental materials and that transient combustibles consist of lube oil, grease, wood, solvent, cleaning materials, anti-C's, and plastic. The licensee also stated that the ignition sources in the area consist of cables.

3.10.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 30A does not have a fire detection or automatic suppression system installed.

3.10.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 30A has a ceiling height of approximately 17′-0″ and an approximate floor area of 171 square feet. The licensee stated that cables DD4–VN5/1 and DD4–VN5/2 for valve LCV–112C are located in Fire Zone 30A in a conduit or tray located approximately 2.5 to 12 feet above the floor. The licensee also stated that ignition sources located less than 20 feet horizontally from the cable consist of cables, electrical cabinets, and a dry transformer. According to the licensee, the electrical cabinets are separated from the cables by approximately 1.8 feet horizontally and the dry transformer is located under the cables separated from the cables by approximately 0.1 feet horizontally. As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.10.4 OMAs Credited for a Fire in Fire Area PAB–2{5} (Fire Zone 30A)

3.10.4.1 OMA #22—Locally Close LCV–112C and Open Bypass Valve 288 To Establish Flowpath From RWST to Charging Pump Suction

The licensee stated that preemptive steps in procedure 3–ONOP–FP–1 to secure the 31 and 32 charging pumps early in the fire scenario will trigger action via 3–AOP–SSD–1 to locally verify charging pump suction path and perform OMA #22 prior to starting a charging pump. 3–AOP–CVCS–1 provides guidance to be followed in the event that swap of charging pump suction to RWST cannot be confirmed (i.e., loss of CCR indication for valves LCV–112C or LCV–112B), which will also trigger OMA #22.

In the event that a fire occurs and causes a loss of the CCR control or indication for valves LCV–112C or LCV–112B, the licensee stated that OMA #22 is available to restore this function by locally closing LCV–112C and open bypass valve 288 to establish a flowpath from the RWST to the charging pump suction. If OMA #22 becomes necessary, the licensee stated that they have assumed a 60-minute period before re-entering the fire area, a 30-minute diagnosis period, which is assumed to transpire during the 60-minute waiting period and that the required time to perform the action is 11 minutes while the time available is 75 minutes, which provides 4 minutes of margin.

3.10.5 Conclusion for Fire Area PAB–2{5} (Fire Zone 30A)

Although there is 4 minutes of margin available for OMA #22, Fire Zone 30A has moderate combustible fuel loading, lacks fire detection and automatic suppression systems and the licensee did not provide details regarding any discernable separation between the credited and redundant equipment so it is not clear that at least one train of equipment would remain free of fire damage during or following a fire event. The NRC staff finds that OMA #22 has insufficient available time margin to allow for reliable performance considering the potential variables as discussed in NUREG–1852. Therefore, the NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 30A and finds that an exemption from III.G.2 based on OMA #22 cannot be granted for Fire Zone 30A.

3.11 Fire Area PAB–2{5}—Primary Auxiliary Building (Fire Zone 58A—Piping Tunnel, Elevation 41′-0″)

3.11.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles are cable insulation and incidental materials and that transient combustibles consist of lube oil, grease, wood, solvent, cleaning materials, anti-C's, and plastic. The licensee also stated that the ignition sources in the area consist of cables.

3.11.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 58A has an area-wide, ionization smoke detection system designed and installed in accordance with NFPA 72E, 1974 Edition but does not have an automatic fire suppression system installed.

3.11.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 58A has a ceiling height of approximately 10′-0″ to 12′-0″ and an approximate floor area of 1,400 square feet. The licensee stated that cable K1B–W1B for the 32 charging pump is located in Fire Zone 58A in a tray located approximately 9.5 feet above the floor. The licensee also stated that other than cables, there are no ignition sources located less than 20 feet from the cable. As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.11.4 OMAs Credited for a Fire in Fire Area PAB–2{5} (Fire Zone 58A)

3.11.4.1 OMA #19—Locally Close Supply Breaker for 32 Charging Pump

In the event that a fire occurs and causes a failure of the CCR control switch response, or indicating lights prompt operators to investigate breaker status at the switchgear, the licensee stated that OMA #19 is available to restore this function by locally closing the supply breaker for the 32 charging pump. The supply breaker is located in a different fire area. If OMA #19 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 7 minutes while the time available is 75 minutes, which provides 38 minutes of margin.

3.11.4.2 OMA #20—Locally Control 32 Charging Pump Using Scoop Tube Positioner

In the event that a fire occurs and causes damage to the cables serving both the 31 and 32 charging pumps or causes a loss of CCR pump control or pump status indication, the licensee stated that OMA #20 is available to restore this function by locally controlling the 32 charging pump using the scoop tube positioner. If OMA #20 becomes necessary, the licensee stated that they have assumed a 30-minute diagnosis period and that the required time to perform the action is 9 minutes while the time available is 75 minutes, which provides 36 minutes of margin.

3.11.5 Conclusion for Fire Area PAB–2{5} (Fire Zone 58A)

Since there is 38 minutes of margin and 36 minutes of margin available for OMAs #19 and #20, respectively, an automatic smoke detection system installed, and these two particular OMAs have sufficient margin available, the staff finds that there is adequate defense-in-depth to support the use of OMAs #19 and #20 for Fire Zone 58A and that OMAs #19 and #20 are acceptable for the purpose of providing the level of protection intended by the regulation and that an exemption from III.G.2 based on these OMAs is granted for Fire Zone 58A.

3.12 Fire Area PAB–2{5}—Primary Auxiliary Building (Fire Zone 59A—Pipe Penetration Area, Elevation 41′-0″ and 51′-0″ of the Fan House)

3.12.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles are cable insulation and incidental materials and that transient combustibles consist of grease, wood, cleaning materials, anti-C's, and plastic. The licensee also stated that the ignition sources in the area consist of cables and a junction box.

3.12.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 59A has an area-wide, ionization smoke detection system designed and installed in accordance with NFPA 72E, 1974 Edition but does not have an automatic fire suppression system installed.

3.12.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 59A has a ceiling height of approximately 8′-0″ to 26′-0″ and an approximate floor area of 3,782 square feet. The licensee stated that cables JB5–X1J and VK4–X1J for valve HCV–142 are located in Fire Zone 59A in a tray located approximately 6 to 26 feet above the floor. The licensee also stated that ignition sources located less than 20 feet horizontally from the cable consist of cables, an electrical cabinet, and 8 motors attached to motor-operated valves. According to the licensee, the electrical cabinet is located under the cables separated from the cables by approximately 2.6 feet vertically and the motors are separated from the cables by approximately 2.1 feet horizontally and no vertical separation. As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.12.4 OMAs Credited for a Fire in Fire Area PAB–2{5} (Fire Zone 59A)

3.12.4.1 OMA #21—Open Bypass Valve 227 To Establish Charging Flow Path to RCS Around Potentially Failed Close HCV–142

In the event that a fire occurs and causes normal flowpath valve HCV–142 to close, the licensee stated that OMA #21 is available to restore this function by opening bypass valve 227 to establish a charging flowpath to the RCS around the potentially failed close HCV–142. If OMA #21 becomes necessary, the licensee stated that they have assumed a 60-minute period before re-entering the fire area, a 30-minute diagnosis period, which is assumed to transpire during the 60-minute waiting period and that the required time to perform the action is 9 minutes while the time available is 75 minutes, which provides 6 minutes of margin.

3.12.5 Conclusion for Fire Area PAB–2{5} (Fire Zone 59A)

Although there is 6 minutes of margin available for OMA #21, this OMA requires the operator to re-enter the fire area after the fire has been extinguished. Fire Zone 59A contains credible fire scenarios, lacks automatic fire suppression, and the licensee did not provide details regarding any discernable separation between the credited and redundant equipment and clear and direct procedures that instruct operators to proactively perform the OMA so it is not clear that at least one train of equipment would remain free of fire damage during or following a fire event. The NRC staff finds that OMA #21 has insufficient available time margin to allow for reliable performance considering the potential variables as discussed in NUREG–1852. Therefore, the NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 59A and finds that an exemption from III.G.2 based on this OMA cannot be granted for Fire Zone 59A.

3.13 Fire Area TBL–5—Turbine Building (Fire Zone 37A—Ground Floor South, Elevation 15′-0″)

3.13.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles are cable insulation, MCC switchgear, cellulose, plastic, lube oil, and a flammable liquid cabinet and that there are no transient combustibles. The licensee also stated that the ignition sources in the area consist of cables, a junction box, a battery with charger, electrical cabinets, transformers, a dryer,

6.9 kV switchgear vertical panels (potential high energy arcing fault (HEAF) source), and MCC vertical panels.

3.13.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 37A has ionization smoke detectors installed over MCC 34 and over the 6.9 kV switchgear, thermal detection in the battery and charger room, a wet-pipe sprinkler system installed throughout the area except over switchgear, and a wet pipe sprinkler system installed throughout the battery and charger room. The licensee also stated that the detection systems were designed and installed in accordance with NFPA 72E, 1974 Edition and the fire suppression systems were designed and installed in accordance with NFPA 13, 1983 Edition.

3.13.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 37A has a ceiling height of approximately 119′-0″ (See TABLE RAI–GEN–15 of the licensee's May 4, 2010, letter, ML101320263) and an approximate floor area of 5,838 square feet. The licensee stated that cable AQ7–WF6 for the 31 SW strainer is routed through Fire Zone 37A in a tray located approximately 11.3 feet above the floor. The licensee also stated that ignition sources located less than 20 feet horizontally from the cable consist of cables, an MCC, 6.9 kV switchgear, and an electrical cabinet. According to the licensee, the MCC and 6.9 kV switchgear are located under the cable separated by approximately 3 feet vertically and the electrical cabinet is separated from the cable by approximately 8.1 feet horizontally. As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.13.4 OMAs Credited for a Fire in Fire Area TBL–5 (Fire Zone 37A)

3.13.4.1 OMA #25—Locally Manually Backwash SW Pump Strainer, as Required, if Power to Strainer Associated With Selected SW Pump Is Lost

The licensee stated that the need to periodically backwash a selected SW strainer is variable depending on ultimate heat sink conditions and other factors and that the diagnostic indicator to perform the OMA is based on operator rounds monitoring pressure across SW strainers. The licensee also stated that the anticipated fire is a slow developing cable fire located in the cable trays.

In the event that a fire occurs and causes an increase in SW pump strainer differential pressure or a loss of power to the strainer associated with the selected SW pump, the licensee stated that OMA #25 is available to restore this function by locally manually performing a SW pump strainer backwash. In an inspection report dated July 11, 2011 (ML111920339), NRC inspectors identified that this OMA was inappropriate because it was too complex and beyond the limited scope of an OMA to achieve and maintain post-fire hot shutdown. Therefore, the NRC staff finds that it is inappropriate to approve this OMA.

3.13.5 Conclusion for Fire Area TBL–5 (Fire Zone 37A)

The NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 37A and finds that OMA #25 is unacceptable for the purpose of providing the level of protection intended by the regulation and that an exemption from III.G.2 based on this OMA cannot be granted for Fire Zone 37A.

3.14 Fire Area TBL–5—Turbine Building (Fire Zone 38A—Chemical Laboratory, Elevation 15′-0″)

3.14.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles are cable insulation, an MCC, cellulose, plastic, hydrogen, chemicals, and a flammable liquid cabinet and that there are no transient combustibles. The licensee also stated that the ignition sources in the area consist of an electrical cabinet and an MCC.

3.14.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 38A has an ionization smoke detector installed over MCC 32 and a wet-pipe sprinkler suppression system installed in the chemical storage area. The licensee also stated that the detection system was designed and installed in accordance with NFPA 72E, 1974 Edition and the fire suppression system was designed and installed in accordance with NFPA 13, 1983 Edition.

3.14.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 38A has a ceiling height of approximately 8′-0″ and an approximate floor area of 4,500 square feet. The licensee stated that cables AQ7–WF6 and WF6–Z99 for the 31 SW strainer are routed through Fire Zone 38A in a tray or conduit that traverses the area vertically. The licensee also stated that ignition sources located less than 20 feet horizontally from the cables consist of cables and 2 electrical cabinets. According to the licensee, the electrical cabinets are separated from the cables by approximately 11.8 feet horizontally. The licensee further stated that the need to periodically backwash a selected SW strainer is variable depending on ultimate heat sink conditions and other factors and that the diagnostic indicator to perform the OMA is based on operator rounds monitoring pressure across SW strainers. The licensee also stated that the anticipated fire is a slow developing cable fire located in the cable trays. As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.14.4 OMAs Credited for a Fire in Fire Area TBL–5 (Fire Zone 38A)

3.14.4.1 OMA #25—Locally Manually Backwash SW Pump Strainer, as Required, if Power to Strainer Associated With Selected SW Pump Is Lost

The licensee stated that the need to periodically backwash a selected SW strainer is variable depending on ultimate heat sink conditions and other factors and that the diagnostic indicator to perform the OMA is based on operator rounds monitoring pressure across SW strainers.

In the event that a fire occurs and causes an increase in SW pump strainer differential pressure or a loss of power to the strainer associated with the selected SW pump, the licensee stated that OMA #25 is available to restore this function by locally manually performing a SW pump strainer backwash. In an inspection report dated July 11, 2011 (ML111920339), NRC inspectors identified that this OMA was inappropriate because it was too complex and beyond the limited scope of an OMA to achieve and maintain post-fire hot shutdown. Therefore, the NRC staff finds that it is inappropriate to approve this OMA.

3.14.5 Conclusion for Fire Area TBL–5 (Fire Zone 38A)

The NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 37A and finds that OMA #25 is unacceptable for the purpose of

providing the level of protection intended by the regulation and that an exemption from III.G.2 based on this OMA cannot be granted for Fire Zone 38A.

3.15 Fire Area TBL–5—Turbine Building (Fire Zone 43A—South End, Elevation 36′-9″)

3.15.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles are paper, MCC switchgear, rubber, wood, plastic, cable insulation, and incident materials and that transient combustibles consist of lube oil, solvent, grease, cleaning materials, and wood. The licensee also stated that the ignition sources in the area consist of cables, junction boxes, exciter switchgear, transformers, and electrical cabinets.

3.15.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 43A has an automatic wet-pipe sprinkler system installed throughout the zone but does not have an automatic fire detection system installed. The licensee also stated that the fire suppression system was designed and installed in accordance with NFPA 13, 1983 Edition.

3.15.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 43A has a ceiling height of approximately 97′-0″ (See TABLE RAI–GEN–17 of the licensee's May 4, 2010 letter, ML101320263) and an approximate floor area of 7,725 square feet. The licensee stated that cable AQ7–WF6 for the 31 SW strainer is routed through Fire Zone 43A in a tray located approximately 7.4 feet above the floor. The licensee also stated that ignition sources located less than 20 feet horizontally from the cable consist of cables and 2 electrical cabinets. According to the licensee, the electrical cabinets are separated from the cable by approximately 1 foot horizontally. The licensee also stated that the anticipated fire is a slow developing cable fire located in the cable trays. As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.15.4 OMAs Credited for a Fire in Fire Area TBL–5 (Fire Zone 43A)

3.15.4.1 OMA #25—Locally Manually Backwash SW Pump Strainer, as Required, if Power to Strainer Associated With Selected SW Pump Is Lost

The licensee stated that the need to periodically backwash a selected SW strainer is variable depending on ultimate heat sink conditions and other factors and that the diagnostic indicator to perform the OMA is based on operator rounds monitoring pressure across SW strainers.

In the event that a fire occurs and causes an increase in SW pump strainer differential pressure or a loss of power to the strainer associated with the selected SW pump, the licensee stated that OMA #25 is available to restore this function by locally manually performing a SW pump strainer backwash. In an inspection report dated July 11, 2011 (ML111920339), NRC inspectors identified that this OMA was inappropriate because it was too complex and beyond the limited scope of an OMA to achieve and maintain post-fire hot shutdown. Therefore, the NRC staff finds that it is inappropriate to approve this OMA.

3.15.5 Conclusion for Fire Area TBL–5 (Fire Zone 43A)

Although Fire Zone 43A has an automatic wet-pipe sprinkler system installed, OMA #25 is not acceptable, Fire Zone 43A lacks automatic fire detection, and the licensee did not provide details regarding any discernable separation between the credited and redundant equipment, and clear and direct procedures that instruct operators to proactively perform the OMAs, so it is not clear that at least one train of equipment would remain free of fire damage during or following a fire event. Therefore, the NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 43A and finds that OMA #25 is unacceptable for the purpose of providing the level of protection intended by the regulation and that an exemption from III.G.2 based on this OMA cannot be granted for Fire Zone 43A.

3.16 Fire Area TBL–5—Turbine Building (Fire Zone 44A—South End of Heater Bay, Elevation 36′-9″)

3.16.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles are a flammable liquid cabinet, cellulose, rubber, wood, plastic, cable insulation, and incident materials and that transient combustibles consist of lube oil, solvent, grease, cleaning materials, and wood. The licensee also stated that the ignition sources in the area consist of cables, junction boxes, a dry transformer, and electrical cabinets.

3.16.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 44A does not have a fire detection or automatic suppression system installed.

3.16.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 44A has a ceiling height of approximately 29′-0″ and an approximate floor area of 5,625 square feet. The licensee stated that cable AQ7–WF6 for the 31 SW strainer is routed through Fire Zone 44A in a tray located approximately 7.4 feet above the floor. The licensee also stated that ignition sources located less than 20 feet horizontally from the cable consist of cables, an MCC, 6.9 kV switchgear, and electrical cabinets. The licensee also stated that the anticipated fire is a slow developing cable fire located in the cable trays. As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.16.4 OMAs Credited for a Fire in Fire Area TBL–5 (Fire Zone 44A)

3.16.4.1 OMA #25—Locally Manually Backwash SW Pump Strainer, as Required, if Power to Strainer Associated With Selected SW Pump Is Lost

The licensee stated that the need to periodically backwash a selected SW strainer is variable depending on ultimate heat sink conditions and other factors and that the diagnostic indicator to perform the OMA is based on operator rounds monitoring pressure across SW strainers.

In the event that a fire occurs and causes an increase in SW pump strainer differential pressure or a loss of power to the strainer associated with the selected SW pump, the licensee stated that OMA #25 is available to restore this function by locally manually performing a SW pump strainer backwash. In an inspection report dated July 11, 2011 (ML111920339), NRC inspectors identified that this OMA was inappropriate because it was too complex and beyond the limited scope of an OMA to achieve and maintain post-fire hot shutdown. Therefore, the NRC staff finds that it is inappropriate to approve this OMA.

3.16.5 Conclusion for Fire Area TBL–5 (Fire Zone 44A)

Since OMA #25 is unacceptable and Fire Zone 44A lacks fire detection and automatic suppression and the licensee did not provide details regarding any discernable separation between the credited and redundant equipment and clear and direct procedures that instruct operators to proactively perform the OMA, it is not clear that at least one train of equipment would remain free of fire damage during or following a fire event. Therefore, the NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 44A and finds that OMA #25 is unacceptable for the purpose of providing the level of protection intended by the regulation and that an exemption from III.G.2 based on this OMA cannot be granted for Fire Zone 44A.

3.17 Fire Area TBL–5—Turbine Building (Fire Zone 52A—Chemical Addition Area, Elevation 32′-6″ of AFW Bldg)

3.17.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles are cable insulation, cellulose barrels, and rubber hose and that transient combustibles consist of lube oil, solvent, grease, cleaning materials, and wood. The licensee also stated that the ignition sources in the area consist of motors, compressors, and a water heater.

3.17.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 52A does not have a fire detection or automatic suppression system installed.

3.17.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 52A has a ceiling height of approximately 8′-6″ and an approximate floor area of 1,254 square feet. The licensee stated that cable JB1–X32/1 for valve FCV–1121 (recirculation flow for the 31 AFW pump) is located in Fire Zone 52A in rigid steel conduit. The licensee also stated that ignition sources located less than 20 feet horizontally from the cable consist of cables, 2 motors, and 2 electrical cabinets. According to the licensee, the motors are separated from the cable by approximately 13.2 feet horizontally and the two electrical cabinets are separated from the cable by approximately 6.3 feet horizontally.

The licensee stated that cable K45–YM3 for valves FCV–406A and FCV–406B (31 AFW pump discharge to 31 SG and 32 SG) is located in Fire Zone 52A in rigid steel conduit. The licensee also stated that ignition sources located less than 20 feet horizontally from the cables consist of cables, 2 motors, and 2 electrical cabinets. According to the licensee, the motors are separated from the cables by approximately 13.2 feet horizontally and the two electrical cabinets are separated from the cables by approximately 6.3 feet horizontally.

As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.17.4 OMAs Credited for a Fire in Fire Area TBL–5 (Fire Zone 52A)

3.17.4.1 OMA #23—Locally Operate Bypass Valve for FCV–1121 AFW Pump Recirculation Valve During Pump Startup

If a fire were to occur and cause a loss of CCR control or indication of FCV–1121 or cause the valve to close and all AFW flow control valves FCV–406A through 406D fail closed, the licensee stated that OMA #23 is available to restore this function by locally operating the bypass valve for FCV–1121 during pump startup. If OMA #23 becomes necessary, the licensee stated that they have assumed a 4.5-minute diagnosis period and that the required time to perform the action is 8 minutes while the time available is 30 minutes, which provides 17.5 minutes of margin.

3.17.4.2 OMA #24—Locally Operate FCV–406A and 406B To Control AFW Flow to SGs

If a fire were to occur and cause a loss of CCR control or indication of FCV–1121 or cause the valve to close and all AFW flow control valves FCV–406A through 406D fail closed, the licensee stated that OMA #24 is available to restore this function by locally operating valves FCV–406A and FCV–406B to control AFW flow to the SGs. If OMA #24 becomes necessary, the licensee stated that they have assumed a 4.5-minute diagnosis period and that the required time to perform the action is 17 minutes while the time available is 30 minutes, which provides 8.5 minutes of margin.

3.17.5 Conclusion for Fire Area TBL–5 (Fire Zone 52A)

Although there is 17.5 minutes of margin and 8.5 minutes of margin available for OMAs #23 and #24, respectively, Fire Zone 52A lacks fire detection and automatic suppression, and the licensee did not provide details regarding any discernable separation between the credited and redundant equipment and clear and direct procedures that instruct operators to proactively perform the OMAs so it is not clear that at least one train of equipment would remain free of fire damage during or following a fire event. The NRC staff finds that OMA #24 has insufficient available time margin to allow for reliable performance considering the potential variables as discussed in NUREG–1852. Therefore, the NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 52A and finds that an exemption from III.G.2 based on these OMAs cannot be granted for Fire Zone 52A.

3.18 Fire Area TBL–5—Turbine Building (Fire Zone 54A—Main Boiler Feedwater Regulator Area, Elevation 18′-6″ of AFW Bldg)

3.18.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles are cable insulation, incidental material, and a flammable liquid cabinet and that transient combustibles consist of lube oil, solvent, grease, cleaning materials, and wood. The licensee also stated that the ignition sources in the area consist of cables, motors, junction boxes, and an electrical cabinet.

3.18.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 54A does not have a fire detection or automatic suppression system installed.

3.18.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 54A has a ceiling height of approximately 70′ and an approximate floor area of 1,088 square feet. The licensee stated that cable K45–YM3 for valves FCV–406A and FCV–406B are located in Fire Zone 54A in rigid steel conduit. As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.18.4 OMAs Credited for a Fire in Fire Area TBL–5 (Fire Zone 54A)

3.18.4.1 OMA #24—Locally Operate FCV–406A and 406B To Control AFW Flow to SGs

If a fire were to occur and cause a loss of CCR control or indication of FCV–1121 or cause the valve to close and all AFW flow control valves FCV–406A through 406D fail closed, the licensee

stated that OMA #24 is available to restore this function by locally operating valves FCV–406A and FCV–406B to control AFW flow to the SGs. If OMA #24 becomes necessary, the licensee stated that they have assumed a 4.5-minute diagnosis period and that the required time to perform the action is 17 minutes while the time available is 30 minutes, which provides 8.5 minutes of margin.

3.18.5 Conclusion for Fire Area TBL–5 (Fire Zone 54A)

Although there is 8.5 minutes of margin available for OMA #24, Fire Zone 54A lacks fire detection and automatic fire suppression, and the licensee did not provide details regarding any discernable separation between the credited and redundant equipment and clear and direct procedures that instruct operators to proactively perform the OMAs so it is not clear that at least one train of equipment would remain free of fire damage during or following a fire event. The NRC staff finds that OMA #24 has insufficient available time margin to allow for reliable performance considering the potential variables as discussed in NUREG–1852. Therefore, the NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 54A and finds that an exemption from III.G.2 based on this OMA cannot be granted for Fire Zone 54A.

3.19 Fire Area YARD–7—Exterior Yard (Fire Zone 22—Screenwell Area)

3.19.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles are cable insulation, MCC switchgear, plastic, and incidental materials and that transient combustibles consist of lube oil, solvent, grease, cleaning materials, and wood. The licensee also stated that the ignition sources in the area consist of cables, a junction box, a transformer, motors, pumps, and an electrical cabinet.

3.19.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 22 has an area-wide, photoelectric smoke detection system that was designed and installed in accordance with NFPA 72E, 1987 Edition but does not have an automatic fire suppression system installed.

3.19.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 22 has an approximate floor area of 784 square feet. Service water pumps 31, 32, 33, 34, 35, and 36, pump discharge strainers 31–36, and their power cables are located in the metal enclosure that comprises this fire zone. Backup service water pumps 37, 38, and 39 are located over 100 feet away on the plant discharge canal with negligible fixed combustibles between the two groups of pumps. Although it is unlikely due to the low fire loading, a fire in this fire zone could potentially disable service water pumps 31–36, which would render the three emergency diesel generators inoperable due to lack of cooling water, along with other safe shutdown equipment that requires cooling water. The licensee stated that in the case of a loss of offsite power in conjunction with the fire in Fire Zone 22, they could perform an OMA to start the ARDG and energize backup service water pump 38 to provide cooling water as needed. As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.19.4 OMAs Credited for a Fire in Fire Area YARD–7 (Fire Zone 22)

3.19.4.1 OMA #26—Locally Start ARDG To Supply MCC 312A in Support of the Use of SW Pump 38

In the event that a fire occurs and causes a loss of CCR control or indication for all SW pumps, the licensee stated that OMA #26 is available to restore this function by locally starting the ARDG (which is air-cooled) to supply MCC 312A in order to energize the 38 service water pump. If OMA #26 becomes necessary, the licensee stated that they have assumed a less than 1-minute diagnosis period and that the required time to perform the action is 25 minutes while the time available is greater than 60 minutes, which provides 35 minutes of margin. The NRC staff notes that this is equivalent to implementing an alternate safe shutdown system in accordance with III.G.3 and does not qualify for a III.G.2 exemption.

3.19.4.2 OMA #27—Locally Manually Backwash SW Pump Strainer, as Required, if Power to Strainer Associated With Selected SW Pump Is Lost

The licensee stated that the need to periodically backwash a selected SW strainer is variable depending on ultimate heat sink conditions and other factors and that the diagnostic indicator to perform the OMA is based on operator rounds monitoring pressure across SW strainers.

In the event that a fire occurs and causes an increase in SW pump strainer differential pressure or a loss of power to the strainer associated with the selected SW pump, the licensee stated that OMA #25 is available to restore this function by locally manually performing a SW pump strainer backwash. In an inspection report dated July 11, 2011 (ML111920339), NRC inspectors identified that this OMA was inappropriate because it was too complex and beyond the limited scope of an OMA to achieve and maintain post-fire hot shutdown. Therefore, the NRC staff finds that it is inappropriate to approve this OMA.

3.19.5 Conclusion for Fire Area YARD–7 (Fire Zone 22)

Since OMA #26 is a III.G.3 solution which does not qualify for a III.G.2 exemption, and the NRC staff has determined that OMA #27 is an inappropriate OMA, and Fire Zone 22 lacks automatic fire suppression and the licensee did not provide details regarding any discernable separation between the credited and redundant equipment, it is not clear that at least one train of equipment would remain free of fire damage during or following a fire event. Therefore, the NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 22 and finds that an exemption from III.G.2 based on these OMAs cannot be granted for Fire Zone 22. The NRC previously granted an exemption for Fire Zone 22 dated January 7, 1987 (ML003779008), but that exemption was primarily associated with the use of the IP3 Alternate Safe Shutdown System. The IP3 Alternate Safe Shutdown System was not evaluated here as the licensee only requested consideration for the OMAs.

3.20 Fire Area YARD–7—Exterior Yard (Fire Zone 222—Backup Service Water Pit)

3.20.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles are cable insulation and that there are no transient combustibles. The licensee also stated that the ignition sources in the area consist of motors and pumps.

3.20.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 222 does not have a fire detection or automatic fire suppression system installed.

3.20.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 222 is an open outdoor area. The licensee stated that cables C2B–XD6 and C2B–XD6/1 for the 38 SW pump are routed through Fire Zone 222 in conduit located approximately 13 feet above the floor. The licensee also stated that ignition sources located less than 20 feet horizontally from the cables consist of cables and a temporary yard power station. According to the licensee, the temporary yard power station is separated from the cables by approximately 18 feet horizontally.

The licensee also stated that cables MY1–PY1 and PY1–XV2 for the 38 SW strainer are routed through Fire Zone 222. The licensee also stated that ignition sources located less than 20 feet horizontally from the cables consist of cables and three motors. According to the licensee, the motors are separated from the cables by approximately 13.2 feet horizontally.

As discussed in Section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.20.4 OMAs Credited for a Fire in Fire Area YARD–7 (Fire Zone 222)

3.20.4.1 OMA #27—Locally Manually Backwash SW Pump Strainer, as Required, if Power to Strainer Associated With Selected SW Pump Is Lost

The licensee stated that the need to periodically backwash a selected SW strainer is variable depending on ultimate heat sink conditions and other factors and that the diagnostic indicator to perform the OMA is based on operator rounds monitoring pressure across SW strainers.

In the event that a fire occurs and causes an increase in SW pump strainer differential pressure or a loss of power to the strainer associated with the selected SW pump, the licensee stated that OMA #25 is available to restore this function by locally manually performing a SW pump strainer backwash. In an inspection report dated July 11, 2011 (ML111920339), NRC inspectors identified that this OMA was inappropriate because it was too complex and beyond the limited scope of an OMA to achieve and maintain post-fire hot shutdown. Therefore, the NRC staff finds that it is inappropriate to approve this OMA.

3.20.5 Conclusion for Fire Area YARD–7 (Fire Zone 222)

Since Fire Zone 222 lacks fire detection and automatic suppression and the licensee did not provide details regarding any discernable separation between the credited and redundant equipment, it is not clear that at least one train of equipment would remain free of fire damage during or following a fire event. The NRC staff has also found that the use of OMA #27 is inappropriate. Therefore, the NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 222 and finds that OMA #27 is unacceptable for the purpose of providing the level of protection intended by the regulation and that an exemption from III.G.2 based on this OMA cannot be granted for Fire Zone 222.

4.0 Feasibility and Reliability of the Operator Manual Actions

Based on Section 3.0 above, several areas where OMAs are credited were found acceptable. The OMAs credited in those areas were then evaluated for feasibility and reliability. This analysis postulates that OMAs may be necessary to assure SSD capability in addition to the traditional fire protection features described above. NUREG–1852, ''Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire,'' provides criteria and associated technical bases for evaluating the feasibility and reliability of post-fire OMAs in nuclear power plants. The following provides the licensee's justification for the OMAs specified in this exemption.

4.1 Bases for Establishing Feasibility

The licensee's analysis addresses factors such as environmental concerns, equipment functionality and accessibility, available indications, communications, portable equipment, personnel protection equipment, procedures and training, and staffing and demonstrations. In its submittals, the licensee stated that environmental factors such as radiation, lighting, temperature, humidity, smoke, toxic gas, noise, and fire suppression discharge were evaluated and found to not represent a negative impact on the operators' abilities to complete the OMAs. The licensee stated that normal radiation conditions within the areas of concern will not be adversely affected by the fire and subsequent spurious equipment operation. The licensee also confirmed that each of the OMA locations addressed by this exemption are provided with emergency lighting that illuminates both the potential egress paths and the component requiring OMA manipulation.

The licensee also confirmed that temperature and humidity conditions will not challenge the operators performing the OMAs. Additionally, the licensee indicated that heat and smoke or gas generation from a fire will not impact the operator performing the OMAs. For those specific cases in which it is necessary to reenter the fire area no less than 1 hour after the postulated fire event, the licensee stated that sufficient time is available to initiate smoke/heat venting through fixed ventilation systems and augmented by portable smoke ejectors, consistent with the Pre-Fire Plans, to ensure operator habitability to implement the necessary OMAs. In addition, the licensee stated that pre-staged self-contained breathing apparatus (SCBA), sufficient to equip the full operating crew, are available for deployment in response to post-fire environmental conditions.

The licensee stated that equipment credited for implementation of OMAs was reviewed to ensure it is accessible, available, and not damaged by the affects of the fire. Where ladders are required for access to components to perform OMAs, appropriate ladders are staged in accordance with plant procedures and the presence of these ladders is verified periodically in accordance with plant surveillance procedures. Any tools that are required in support of post-fire hot shutdown OMAs are pre-staged at the locations where they would be used. These consist of common tools such as wrenches, banding cutters, and pliers. Where special tools/equipment are required, the licensee stated that they are designated for post-fire cold shutdown repairs, and the necessary tools and supplies are pre-staged in designated locations. The staging of necessary tools is confirmed via periodic surveillance.

In addition, the licensee indicates that procedures are in place, in the form of fire response procedures, to ensure that clear and accessible instructions on how to perform the manual actions are available to the operators. The licensee stated that all of the requested OMAs are directed by plant procedures, and the operators are trained in the use of the procedures. Specifically, the licensee stated that post-fire operator manual actions are clearly defined in procedures 3–ONOP–FP–001 and 3–AOP–SSD–1. The OMAs required for the III.G.2 fire areas are directed by Off-Normal Operating Procedure 3–ONOP–FP–001. Where CCR controls and indications are not assured to be reliably operable, the licensee stated that sufficiently detailed guidance is provided in procedure 3–AOP–SSD–1 to

direct the operators to an alternate component or operating method that is assured to be available and viable for the specific fire scenario under consideration. Initial and periodic requalification operator training is provided on these procedures, consistent with standard licensed and non-licensed operator training programs.

The licensee stated that key diagnostic instrumentation is expected to remain available in the CCR to alert operators to implement the contingency OMAs as credited in the IP3 Appendix R SSD Analysis. Key indicators that trigger the need for local operator intervention for the credited set of OMAs include not only the RCS and secondary system instrumentation, but also the failure of components to respond or reliably indicate status in the CCR. The licensee further stated that based on field notes compiled from simulator exercises in which bounding fire area scenarios were modeled, the available CCR instruments and indicators, combined with operator response in accordance with Emergency Operating Procedures (EOPs), AOPs, fire SSD procedures, and other supporting procedures, are sufficient to ensure timely diagnosis of conditions requiring the dispatch of operator(s) to perform the credited OMAs outside the CCR.

With regard to communications, the licensee stated that reliance is placed on radios for communication between plant operators during a post-fire shutdown event. Radio repeaters are located outside the protected area and are not subject to disruption caused by fire events within the protected area. The repeaters are also equipped with uninterruptible power supplies to ensure continued operation in the event of the loss of normal power to the buildings in which they are located. Field verifications of radio system functionality have validated that communications between the designated control and monitoring locations are feasible and reliable.

The licensee stated that the manual action sequences in all of the Section III.G.2 areas are considered to be bounded by the sequences represented by alternate shutdown (Section III.G.3) Fire Area A. With regard to staffing, the licensee stated that timed field walkthroughs of Abnormal Operating Procedure 3–AOP–SSD–1 have been performed to validate that the number of operators available on the watch staff (7) can safely accomplish all required actions within the required time period to meet Appendix R SSD performance goals. The licensee stated that the broad set of operator manual actions required in implementing alternate shutdown procedure 3–AOP–SSD–1 bounds the smaller set of manual actions credited for coping with III.G.2 fire area scenarios and that most OMAs required for the III.G.2 fire areas are directed by Off-Normal Operating Procedure 3–ONOP–FP–001.

Additionally, the licensee stated that post-fire OMAs have been validated through timed operator walkthroughs, using as the basis an enveloping scenario addressed by 3–AOP–SSD–1. When utilizing 3–AOP–SSD–1, the most challenging set of local manual operator actions (number of actions and time sensitivity of actions) is presented to the operations shift crew, and this set of actions is considered to adequately bound the limited set of manual actions that are credited in 3–ONOP–FP–001. The licensee states that the timed walkthroughs of 3–AOP–SSD–1 have consistently demonstrated that the key SSD tasks (e.g., restoration of RCS makeup; restoration of AFW to SGs; mitigation of key potential spurious actuation concerns) can be accomplished in a timely manner to meet the Appendix R SSD performance goals. The licensee further states that in addition to the validation of key OMAs credited in alternate SSD procedure 3–AOP–SSD–1, the plant simulator was utilized to perform evaluations of bounding III.G.2 fire scenarios, and based on the field notes compiled from these exercises, there is reasonable assurance that conditions requiring the implementation of the identified OMAs can be identified and mitigated in a sufficiently timely manner to ensure Appendix R performance goals are met.

4.2 Feasibility

The licensee's analysis demonstrates that, with exceptions, the OMAs can be diagnosed and executed within the amount of time available to complete them. The licensee's analysis also demonstrates that various factors, as discussed above, have been considered to address uncertainties in estimating the time available. The licensee stated that the credited OMAs have been demonstrated to be feasible through timed evolutions performed using a combination of simulator drills and dispatch of operators to simulate performance of the OMAs within the physical plant. In most cases, the OMAs are completed, with margin remaining, within the time constraints established by the supporting SSD thermal-hydraulic analyses. The licensee stated that the time values have been shown to be consistently achievable, and the operations resource demand required to support any one of the fire area scenarios is a fraction of the 7-operator complement available to support a PFSSD scenario.

The following table summarizes the ''required time'' versus ''available time'' for each OMA. The indicated ''required time'' is the time needed to complete all actions that may be required as a result of fire in each of the identified fire areas and includes diagnosis time, implementation time, and uncertainty time. The indicated ''available time'' is the time by which the action must be completed in order to meet the assumptions in plant analyses. The NRC staff finds that the required time to perform the actions is reasonable as the licensee has verified these times in simulator scenarios and by simulating performance in the plant. Where reentry to a fire area is required to perform an OMA, a 60-minute waiting period is also included in the required time and the diagnosis period for these instances was assumed to occur concurrent with the waiting period. Finally, the times noted below should be considered with the understanding that the manual actions are a fall back in the unlikely event that the fire protection defense-in-depth features are insufficient.

Fire area	Fire zones [1]	OMA ID [2]	OMA Summary	Required time (min) [3]	Available time (min)	Available margin (min)
AFW–6	23	1	Locally start 33 AFW Pump via operation of the Bus 6A circuit breaker.	17.5	30	12.5
ETN–4{1}	7A	2	Swap 32 Component Cooling Water (CCW) pump to alternate power supply or align city water to charging pumps.	34	>60	26
	7A	3	Operate 480V Bus 3A breaker locally to start 31 AFW pump.	11.5	30	18.5

Fire area	Fire zones [1]	OMA ID [2]	OMA Summary	Required time (min) [3]	Available time (min)	Available margin (min)
	7A	4	Locally operate Flow Control Valve (FCV)–1121 in support of use of 31 AFW pump.	12.5	30	17.5
	60A	5	Operate HCV–1118 manually to control 32 AFW pump.	21.5	30	[4] 8.5
	7A, 60A	6	Align Appendix R Diesel Generator (ARDG) to 480V Buses 2A, 3A, 5A, and 312.	50	75	[5] 25
	7A, 60A	7	Swap 31 or 32 charging pump to alternate power supply.	38	75	37
	7A, 60A	8	Locally operate FCV–405B, FCV–405D, or FCV–406B to control AFW flow to Steam Generators (SGs).	21.5	30	[4] 8.5
	60A	9	Locally open valve 227 to establish charging [previously "CVCS'] makeup flowpath to Reactor Coolant System (RCS).	69	75	[4] 6
	60a	10	Locally close valve LCV–112C and open valve 288 to align charging pump suction to the Refueling Water Storage Tank (RWST).	71	75	[4] 4
	60A	11	Locally operate PCV–1139 to ensure steam supply to 32 AFW pump.	21.5	30	[4] 8.5
	60A	12	Locally operate PCV–1310A and PCV–1310B to ensure steam supply to 32 AFW pump.	21.5	30	[4] 8.5
	60A	13	Locally manually perform Service Water (SW) pump strainer backwash as required.	>75	>60	*
ETN–4{3}	73A	14	Operate HCV–1118 manually to control 32 AFW pump.	21.5	30	[4] 8.5
		15	Locally operate PCV–1139 to ensure steam supply to 32 AFW pump.	21.5	30	[4] 8.5
		16	Locally operate 32 PCV–1310A, PCV–1310B to ensure steam supply to 32 AFW pump.	21.5	30	[4] 8.5
		17	Locally operate FCV–405C and FCV–405D to control AFW flow to SG.	21.5	30	[4] 8.5
PAB–2{3}	6	18	Locally close valve LCV–112C and open valve 228 to align charging pump suction path to RWST.	71	75	[4] 4
PAB–2{5}	17A, 19A, 58A,	19	Locally close supply breaker for 32 Charging Pump [previously "CVCS"] Pump.	37	75	38
	17A, 19A, 58A	20	Locally control 32 charging [previously "CVCS"] pumps using scoop tube positioner.	39	75	36
	59A	21	Open bypass valve 227 to establish charging flowpath to RCS around potentially failed closed HCV–142.	69	75	[4] 6
	17A, 20A, 27a, 30A	22	Locally Close LCV–112C and open bypass valve 288 to establish flowpath from RWST to charging pump suction.	71	75	[4] 4
TBL–5	52A	23	Locally operate [bypass valve for] FCV–1121 AFW pump recirculation valve during pump startup.	12.5	30	17.5
	52A, 54A	24	Locally operate FCV–406A and FCV–406B to control AFW flow to SGs.	21.5	30	[4] 8.5
	37A, 38A, 43A, 44A	25	Locally/manually backwash SW pump strainer as required if power to strainer associated with selected SW pump is lost (use one of STR PMP–31 through STR PMP–36).	>75	>60	*
YARD–7	22	26	Locally start ARDG to supply Motor Control Center (MCC) 312A in support of the use of SW pump 38.	25	>60	[5] >35

Fire area	Fire zones [1]	OMA ID [2]	OMA Summary	Required time (min) [3]	Available time (min)	Available margin (min)
	22, 222	27	Locally/manually backwash SW Pump strainer as required if power to strainer associated with selected SW pump is lost.	>75	>60	*

* Not acceptable.
[1] Fire Areas are areas of fire origin; Indicated Fire Zones contain the cables or equipment whose damage due to fire may require implementation of the OMAs.
[2] Operator Action ID designators (1, 2, 3 etc.) were assigned by the NRR reviewer.
[3] Total of simulator-based diagnosis was added to the field-based time to travel to the OMA location, complete the OMA, confirm the action, and notify the CCR of completion as well as the 60-minute waiting period as discussed above.
[4] OMAs found to be feasible but unreliable.
[5] OMAs associated with III.G.3.

4.3 Reliability

As stated in NUREG–1852, for a feasible action to be performed reliably, it should be shown that there is adequate time available to account for uncertainties not only in estimates of the time available, but also in estimates of how long it takes to diagnose and execute the OMAs (e.g., as based, at least in part, on a plant demonstration of the action under non-fire conditions). To confirm reliability, for each fire area having the potential to initiate the need for an OMA, the licensee considered uncertainties associated with estimating how long it takes to diagnose and execute operator manual actions.

Where the licensee demonstrated that adequate margin was available, the required completion times noted in the table above provide reasonable assurance that the OMAs can reliably be performed under a wide range of conceivable conditions by different plant crews because the completion times, in conjunction with the available time margins associated with each action and other installed fire protection features, account for sources of uncertainty such as variations in fire and plant conditions, factors unable to be recreated in demonstrations and human-centered factors. As noted in the table above, several of the OMAs included in this review were found to be reliable because there is adequate time available to account for uncertainties not only in estimates of the time available, but also in estimates of how long it takes to diagnose a fire and execute the OMAs (e.g., as based, at least in part, on a plant demonstration of the actions under non-fire conditions). Other OMAs were determined to be feasible but not reliable since only nominal margin is available to complete them. Those OMAs found to be feasible but unreliable are those indicated by footnote #4 to the table above.

4.4 Summary of Defense-in-Depth and Operator Manual Actions

In summary, the defense-in-depth concept for a fire in the fire areas included in the table below provides a level of safety that results in the unlikely occurrence of fires, rapid detection, control and extinguishment of fires that do occur and the protection of structures, systems and components important to safety. For these particular fire zones and the OMAs credited in them and found acceptable in Sections 3.0 and 4.0 above, the licensee has provided preventative and protective measures in addition to feasible and reliable OMAs that together demonstrate the licensee's ability to preserve or maintain SSD capability in the event of a fire in the analyzed fire areas. The remaining zones included in the licensee's request were found to provide an inadequate level of defense-in-depth or safety margin and as such the requested OMAs for these zones are not approved for permanent use. The table below summarizes which fire zones are granted exemptions from III.G.2.

Fire zone	Area of fire origin	Exemption approved for this fire zone
23	AFW–6	Previous exemption remains valid.
7A	ETN–4{1}	No.
60A	ETN–4{1}	No.
73A	ETN–4{3}	No.
6	PAB–2{3}	No.
17A	PAB–2{5}	No.
19A	PAB–2{5}	No.
20A	PAB–2{5}	No.
27A	PAB–2{5}	No.
30A	PAB–2{5}	No.
58A	PAB–2{5}	Yes.
59A	PAB–2{5}	No.
37A	TBL–5	No.
38A	TBL–5	No.
43A	TBL–5	No.
44A	TBL–5	No.
52A	TBL–5	No.
54A	TBL–5	No.
22	YARD–7	No.
222	YARD–7	No.

4.5 Authorized by Law

This exemption would allow IP3 to rely on specific OMAs, as discussed in Sections 3.0 and 4.0 above, in conjunction with the other installed fire protection features, to ensure that at least one means of achieving and maintaining safe shutdown remains available during and following a postulated fire event, as part of its fire protection program, in lieu of meeting the requirements specified in III.G.2 for a fire in the analyzed fire areas. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of this exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

4.6 No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR part 50, Appendix R, Section III.G is to ensure that at least one means of achieving and maintaining safe shutdown remains available during and following a postulated fire event. Based on the above, no new accident precursors are created by the use of the specific OMAs, in conjunction with the other installed fire protection features, in response to a fire in the analyzed fire areas. Therefore, the probability of postulated accidents is not increased. Also based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

4.7 Consistent With Common Defense and Security

This exemption would allow IP3 to credit the use of the specific OMAs, in conjunction with the other installed fire protection features, in response to a fire in the analyzed fire areas, discussed above, in lieu of meeting the requirements specified in III.G.2. This

change to the operation of the plant has no relation to security issues. Therefore, the common defense and security is not diminished by this exemption.

4.8 Special Circumstances

One of the special circumstances described in 10 CFR 50.12(a)(2)(ii) is that the application of the regulation is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR Part 50, Appendix R, Section III.G is to ensure that at least one means of achieving and maintaining safe shutdown remains available during and following a postulated fire event. While the licensee does not comply with the explicit requirements of Section III.G.2, the approved OMAs, in conjunction with the other installed fire protection features, provide a method to ensure that a train of equipment necessary to achieve and maintain safe shutdown of the plant will be available in the event of a fire in these fire zones. The NRC staff concludes that application of the regulation is not necessary to achieve the underlying purpose of the rule for the plant configurations approved in this exemption. Therefore special circumstances exist, as required by 10 CFR 50.12(a)(2)(ii), that warrant the issuance of this exemption.

5.0 Conclusion

Based on all of the features of the defense-in-depth concept discussed for the fire zones listed in Section 4.4 of this exemption, the NRC staff concludes that the use of specific OMAs found acceptable in Sections 3.0 and 4.0 of this evaluation, in these particular instances and in conjunction with the other installed fire protection features, in lieu of strict compliance with the requirements of III.G.2, will allow IP3 to meet the underlying purpose of the rule for those fire zones. The use of other specific OMAs in certain fire zones were found to be not acceptable, as discussed in Sections 3.0 and 4.0 of this evaluation, and as such, are not approved by this exemption.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security and that special circumstances are present to warrant issuance of the exemption. Therefore, the Commission hereby grants Entergy an exemption from the requirements of Section III.G.2 of Appendix R of 10 CFR part 50, to utilize the OMAs approved above at IP3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (76 FR 74832).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this first day of February 2012.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–3122 Filed 2–14–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: March 7, 2012—Albuquerque, NM; The U.S. Nuclear Waste Technical Review Board Will Meet To Discuss DOE Work on Criteria and Modeling for Generic Repository Geologies

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Technical Review Board will hold a public meeting in Albuquerque, New Mexico, on Wednesday, March 7, 2012. The meeting will focus on Department of Energy (DOE) work related to geologic disposal of spent nuclear fuel and high-level radioactive waste. Following up on presentations at the Board's January meeting in Arlington, Virginia, DOE will discuss technical site-selection criteria for a deep geologic repository. A representative of the U.S. Geological Survey (USGS) will provide a USGS perspective on this subject. The meeting also will include a presentation on the status of DOE's development of performance assessment models for different rock types and its evaluation of technical issues related to deep borehole disposal. A representative of the Blue Ribbon Commission on America's Nuclear Future (BRC) will kick off the meeting with an overview of the BRC's final report and recommendations to the Secretary of Energy.

The meeting will begin at 8 a.m. and will adjourn at approximately 5:45 p.m. It will be held at the Sheraton Albuquerque Airport Hotel, 2910 Yale Blvd. SE., Albuquerque, New Mexico 87106; (Tel) 505–843–7000; (Fax) 505–843–6307. A block of rooms has been reserved at the hotel for meeting attendees. To ensure receiving the Federal government rate of $81.00 per night, room reservations must be made in the ''NWTRB'' room block by Friday, February 17, 2012. The number to call for reservations is 1–800–227–1117. The electronic reservation link is *http://www.starwoodmeeting.com/Star;GroupsWeb/res?id=1201240950&key=A0B7A.*

A detailed agenda will be available on the Board's Web site at *www.nwtrb.gov* approximately one week before the meeting. The agenda also may be obtained by telephone request at that time.

The meeting will be open to the public, and an opportunity for public comment will be provided at the end of the day. Those wanting to speak are encouraged to sign the ''Public Comment Register'' at the check-in table. A time limit may need to be set for individual remarks, but written comments of any length may be submitted for the record.

A transcript of the meeting will be available on the Board's Web site, by email, on computer disk, or in paper form on a library-loan basis from Davonya Barnes of the Board's staff after March 30, 2012.

The Board was established as an independent federal agency to provide ongoing objective expert advice to Congress and the Secretary of Energy on technical issues related to nuclear waste management and to review the technical validity of DOE activities related to implementing the Nuclear Waste Policy Act. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences. The Board is required to report to Congress and the Secretary no fewer than two times each year. Board reports, correspondence, congressional testimony, and meeting transcripts and materials are posted on the Board's Web site.

For information on the meeting agenda, contact Karyn Severson. For information on lodging or logistics, contact Linda Coultry. They can be reached at 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495.

Dated: February 9, 2012.

Nigel Mote,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2012–3463 Filed 2–14–12; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that an additional meeting of the Federal Prevailing Rate Advisory Committee will be held on Thursday, March 8, 2012.

The meeting will start at 10 a.m. and will be held in Room 5A06A, U.S. Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the U.S. Office of Personnel Management.

This scheduled meeting is open to the public with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the U.S. Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee at U.S. Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5H27, 1900 E Street NW., Washington, DC 20415, (202) 606–9400.

U.S. Office of Personnel Management.

Sheldon Friedman,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 2012–3577 Filed 2–14–12; 8:45 am]

BILLING CODE 6325–49–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66366; File No. SR–CHX–2011–34]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving a Proposed Rule Change Regarding Suspension of a Participant's Trading Privileges on the Exchange

February 9, 2012.

I. Introduction

On December 16, 2011, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit any officer of the Exchange designated by the Chief Regulatory Officer (''CRO'') to suspend the trading privileges of a Participant on the Exchange's facilities in certain circumstances. The proposed rule change was published for comment in the **Federal Register** on January 4, 2012.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to add Interpretation and Policy .01 to Article 13, Rule 2 (Emergency Suspension) to modify the Exchange's ability to suspend a Participant's trading privileges on the Exchange. Currently, Rule 2 authorizes the Exchange's CRO to suspend a Participant's membership with the Exchange or place other limitations on its activities if various circumstances occur, such as insolvency, failure to perform its contracts or obligations, expulsion or suspension by another self-regulatory organization, or where it reasonably appears that the Participant is violating and will continue to violate any provision of the Exchange's rules or the federal securities laws. The Exchange proposes to permit any officer of the Exchange designated by the CRO to suspend the trading privileges of a Participant on the Exchange's facilities pursuant to the provisions of Rule 2 if a Qualified Clearing Agency refuses to act to clear and settle the trades of that Participant. The CRO must approve any such suspensions within two (2) days of the action. If the CRO does not approve the action taken, the suspension shall be immediately lifted as of the time of his or her decision or after the expiration of two days, whichever is earlier. Suspensions pursuant to these provisions, including the appeal thereof, otherwise would be governed by the provisions of Rule 2.

The Exchange also proposes to correct an oversight by eliminating a reference to the Chief Executive Officer in Section (c) of Rule 2 and replacing it with a reference to the CRO regarding appeals of suspensions under Rule 2.[4]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[6] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. Specifically, the Commission believes that new Interpretation and Policy .01 to Rule 2 will help perfect the mechanisms of a free and open market by providing the Exchange with more flexibility regarding who can suspend the trading privileges of a Participant when a Qualified Clearing Agency refuses to clear and settle the trades of that Participant. Such flexibility should enable the Exchange to take timely action to prevent the execution of trades on the Exchange's facilities by a Participant when a Qualified Clearing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Securities Exchange Act Release No. 66061 (December 28, 2011), 77 FR 312 (''Notice'').

[4] The Exchange stated that it believes that the continued reference to the Chief Executive Officer in Rule 2(c) represents an oversight in a 2006 amendment to the rule. *See* Securities Exchange Act Release No. 54437 (September 13, 2006), 71 FR 55037 (September 20, 2006) (SR–CHX–2005–06).

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

Agency refuses to clear and settle the trades of that Participant.

Additionally, the Commission believes that Article 13, Rule 2(c) and Interpretation and Policy .01 to Article 13, Rule 2 provide fair suspension appeal procedures, and therefore is consistent with Section 6(b)(7) of the Act,[7] which requires that the rules of a national securities exchange provide a fair procedure for the disciplining of members and persons associated with members. The Commission notes that, where an officer of the Exchange suspends a Participant's trading privileges under the narrow circumstances described in Interpretation and Policy .01, the suspension will be lifted automatically within two days of the action unless the CRO approves it, and the CRO may decide to lift the suspension earlier.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CHX–2011–34) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–3472 Filed 2–14–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66363; File No. SR–EDGA–2012–04]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 1.5(q)

February 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2012, the EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''SEC'' and the ''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

EDGA Exchange, Inc. (''EDGA'' or the ''Exchange''), proposes to amend its rules regarding registration, qualification and continuing education requirements for Authorized Traders of Members that engage solely in proprietary trading. EDGA proposes to amend Rules 2.3 and 11.4 and the Interpretations to Rule 2.5 to recognize a new category of limited representative registration for proprietary traders. The Exchange proposes to expand its registration requirements to include the Proprietary Traders Qualification Examination (''Series 56'') as one of the applicable qualification examinations as determined by the Exchange. The Exchange also proposes to permit Authorized Traders of Members who engage solely in proprietary trading to obtain the Series 56 license in order to effect transactions on the Exchange. In addition, the Exchange proposes to amend Rule 2.3 to make it substantially similar to the rules of the Financial Industry Regulatory Authority (''FINRA'') and other Self-Regulatory Organizations (''SROs'') to require Members to register two registered Principals.[3] The text of the proposed Proprietary Traders Qualification Examination Content Outline is attached as Exhibit 3 and the text of the proposed rule changes is attached as Exhibit 5.[4] These documents are available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

In July 2011, NASDAQ filed a proposed rule change with the Commission to recognize a new category of limited representative registration for proprietary traders.[5] In addition, in August 2011, NASDAQ filed a related proposed rule change to use the content outline for the Series 56 examination that would be applicable to proprietary traders.[6]

For the purposes of this category of limited representative registration, NASDAQ Rule 1011(o) defines a proprietary trading firm as a firm that embodies the following characteristics: The Member is not required by Section 15(b)(8) of the Exchange Act (the ''Act'') to become a FINRA member but is a member of another registered securities exchange not registered solely under Section 6(g) of the Act; all funds used or proposed to be used by the Member for trading are the Member's own capital, traded through the Member's own accounts; the Member does not, and will not have ''customers'';[7] all Principals and Authorized Traders of the Member acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Member. In addition, NASDAQ Rule 1032(c) defines a proprietary trader as an Authorized Trader whose activities in the investment banking or securities business are limited solely to proprietary trading; passes an appropriate qualification examination; and is an associated person of a proprietary trading firm as defined in NASDAQ Rule 1011(o). NASDAQ Rule 1032(c) identifies the Series 56 as the appropriate qualification examination for proprietary traders' limited representative registration. Furthermore, NASDAQ's proposed category of limited representative registration expressly excludes those associated persons that deal with the public and states those associated persons should continue to

[7] 15 U.S.C. 78f(b)(7).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that it will continue to require per Exchange Rule 2.3(c) that all Authorized Traders who are to function as Principals on the Exchange to be registered consistent with amended paragraph (c)(2) of Rule 2.3.

[4] The Commission notes that the Outline and the text of the proposed rule change are attached to the filing, not to this Notice.

[5] *See* Securities Exchange [sic] Release No. 64958 (July 25, 2011), 76 FR 45629 (July 29, 2011) (SR–NASDAQ–2011–095). *See also* Securities Exchange [sic] Release No. 65041 (August 5, 2011), 76 FR 49822 (August 11, 2011) (SR–NASDAQ–2011–107).

[6] *See* Securities Exchange [sic] Release No. 65040 (August 5, 2011), 76 FR 49809 (August 11, 2011) (SR–NASDAQ–2011–108).

[7] NASDAQ Rule 0120(g) states, ''the term customer shall not include a broker or dealer.''

register as General Securities Representatives after obtaining the Series 7 license.

NASDAQ worked with FINRA and certain other exchanges, many of which have recently enhanced their registration requirements to require the registration of associated persons,[8] to develop the content outline and qualification examination for proprietary traders. The Series 56 examination program is shared by NASDAQ and the following SROs: Boston Options Exchange, C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated (''CBOE''); Chicago Stock Exchange, Incorporated; International Securities Exchange, LLC (''ISE''); NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX LLC; National Stock Exchange, Incorporated; New York Stock Exchange, LLC (''NYSE''); NYSE AMEX, Incorporated; and NYSE ARCA, Incorporated. Members of FINRA, NASDAQ and the SROs referenced above developed criteria for the Series 56 examination program, which CBOE filed with the SEC on June 17, 2011.[9]

Adoption of Series 56 by the Exchange

The Exchange believes the Series 56 will assist the Exchange in ensuring it has proper registration, qualification and continuing education requirements for associated persons of Members because the Series 56 examination was designed to test a candidate's knowledge of proprietary trading in general and the industry rules applicable to trading of equity securities and listed options contracts. The Series 56 examination covers, among other things, recordkeeping and recording requirements, types and characteristics of securities and investments, trading practices and display execution and trading systems. While the Series 56 examination is primarily dedicated to topics related to proprietary trading, the Series 56 examination also covers some general concepts relating to customers.

The qualification examination consists of 100 multiple choice questions. Candidates have 150 minutes to complete the exam. The content outline, which the Exchange attached as Exhibit 3,[10] describes the following topical sections comprising the examination: Personnel, Business Conduct and Recordkeeping and Reporting Requirements, 9 questions; Markets, Market Participants, Exchanges and SROs, 8 questions; Types and Characteristics of Securities and Investments, 20 questions; Trading Practices and Prohibited Acts, 50 questions; and Display, Execution, and Trading Systems, 13 questions. Representatives from the SROs mentioned above also intend to meet on a periodic basis to evaluate and update, as necessary, the Series 56 examination program.

In addition, NASDAQ and some other SROs have filed or will file similar proposals with the Commission to amend current rules to recognize a new category of limited representative registration for proprietary traders and to permit members engaged solely in proprietary trading to obtain the Series 56 license in order to effect trades on the applicable exchanges.[11] The Exchange proposes to implement the Series 56 examination program upon availability in FINRA's Web CRD® system,[12] notification to its Members and subject to the satisfaction of applicable continuing education requirements, as described in Interpretations .04 and .05 to Rule 2.5.

The Exchange believes that acceptance of the Series 56 qualification examination will benefit both the Exchange and the applicable proprietary traders affected by the proposal. Accordingly, pursuant to the amended rules, as proposed, the Exchange would recognize a new category of limited representative registration for proprietary traders. In addition, the Exchange would expand its registration, qualification and continuing education requirements to include the Series 56 examination as one of the applicable qualification examinations as determined by the Exchange. The Exchange would also permit Authorized Traders of Members who engage solely in proprietary trading to obtain the Series 56 license in order to effect transactions on the Exchange. The Exchange proposes to add Interpretation .06 to Rule 2.5 to incorporate the Series 56 qualification examination as a limited representative registration for proprietary traders, and proposes to identify the characteristics required to satisfy the Exchange's definition of a proprietary trading firm and a proprietary trader, which are modeled after NASDAQ's rules, as discussed above.

In addition, the Exchange proposes to amend Rule 2.3(c)(2) to make it substantially similar to the rules of FINRA and other SROs to require Members to register at least two registered Principals.[13] The proposed amendment applies to firms seeking admission as Members and existing Members, and states that each Member, except a sole proprietorship or a proprietary trading firm with 25 or fewer Authorized Traders (''Limited Size Proprietary Firm''),[14] shall have at least two officers or partners who are registered as Principals with respect to the Member's equities securities business and, at a minimum, one such Principal shall be the Member's Chief Compliance Officer (''CCO'').[15]

The Exchange proposes additional amendments to Rule 2.3(c)(3) and (4) to require Members to register a CCO and a Financial/Operations Principal (''FINOP'') in order to make the Exchange's rules substantially similar to the rules of FINRA and other SROs. In addition, this more accurately reflects the heightened level of accountability inherent in the duty of overseeing compliance by a Member of the Exchange, and in the oversight and preparation of financial reports and the oversight of those employed in financial and operational capacities at each Member firm. The proposed amendments state each Member shall designate a CCO on the Schedule A of Form BD, and requires the individual designated as a CCO to register with the Exchange and pass the General Securities Principal Examination (Series 24). Similarly, the proposed amendments to Rule 2.3 require each Member subject to Rule 15c3–1 of the Act to designate a FINOP, and requires the individual designated as a FINOP to successfully complete the Financial and Operations Principal Examination (Series 27), and register in that capacity with the Exchange as prescribed by the Exchange.

The Exchange proposes to make other ministerial amendments to Rule 2.3 to accommodate the placement of the proposed amendments outlined in this rule filing.

[8] *See* Securities Exchange Act Release Nos. 63843 (February 4, 2011), 76 FR 7884 (February 11, 2011) (SR–ISE–2011–155); and 63314 (November 12, 2010), 75 FR 70957 (November 9, 2010) (SR–CBOE–2010–084).

[9] *See supra* note 3. *See* also Securities Exchange Act Release No. 64699 (June 17, 2011), 76 FR 36945 (June 23, 2011) (SR–CBOE–2011–056).

[10] *See* note 4.

[11] *See supra* notes 2, 3, 5 and 6.

[12] *See www.finra.org/Industry/Compliance/Registration/CRD/*

[13] The Exchange proposes to communicate this amendment to Members by publishing an Information Circular on the Exchange's Web site. Existing Members shall receive additional time to satisfy this requirement.

[14] The Exchange proposes to create an exception to Rule 2.3(c)(2) where a Limited Size Proprietary Firm must register at least one Principal with the Exchange. In addition, the Exchange may waive the two Principal requirement in situations that indicate conclusively that only one Principal associated with the Member should be required.

[15] The Commission notes that EDGA is an equities exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(c)(3)(B) of the Act.[17] Under that section, it is the Exchange's responsibility to prescribe standards of training, experience, and competence for Exchange Members and their associated persons, in particular, by offering an alternative qualification examination for proprietary traders that more closely reflects the practical knowledge that is a pre-requisite to proprietary trading. Pursuant to this statutory obligation, the Exchange requests to recognize a new category of limited representative registration for proprietary traders and to permit Authorized Traders of Members who engage solely in proprietary trading to obtain the Series 56 license. The Exchange believes the Series 56 examination establishes that Authorized Traders of Members have attained specified levels of competence and knowledge generally applicable to proprietary trading.

The Exchange believes that the requirement that persons functioning in certain supervisory capacities, including CCO and a FINOP, be registered through the WebCRD® system and be subject to higher qualification standards appropriately reflects the enhanced responsibility of their roles and is consistent with the Act. The general requirement that Members must have a minimum of two Principals responsible for oversight of Member organization activity, who must be registered as such and pass a principal exam, should help the Exchange strengthen the regulation of its Member firms, and prepare those individuals for their responsibilities. The nature of the firm, however, may dictate that more than two Principals are needed to provide appropriate supervision. In addition, the requirement for each Member to have a CCO who must register and pass the Series 24 exam and a FINOP who must register and pass the Series 27 exam is appropriate based on the heightened level of accountability inherent in the duty of overseeing compliance by a Member of the Exchange, and in the oversight and preparation of financial reports and the oversight of those employed in financial and operational capacities at each Member firm.

The Exchange believes that this proposal will enhance its ability to ensure an effective supervisory structure for those conducting business on the Exchange. The requirements apply broadly and are intended to help close a regulatory gap which has resulted in varying registration, qualification, and supervision requirements across markets. The Exchange believes that the changes proposed to its rules will strengthen its regulatory structure and should enhance the ability of its Authorized Traders and Members to comply with the Exchange's rules as well as with the federal securities laws.

In addition, the Exchange believes that the proposed rule change is consistent with the principles of Section 11A(a)(1)(C)(ii) of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule will promote uniformity of regulation across markets, thus reducing opportunities for regulatory arbitrage. EDGA's proposed rule change helps ensure that all persons conducting a securities business through EDGA are appropriately supervised, as the Commission expects of all SROs.

The proposed changes are also consistent with Section 6(b)(5) of the Act,[18] because they would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by enabling such persons to qualify for registration with the Exchange by offering an alternative qualification examination that specifically addresses industry topics that establish the foundation for the regulatory and procedural knowledge necessary for such persons electing to register as Proprietary Traders. Similarly, including new requirements for Members to maintain at least two Principals, a CCO and a FINOP, harmonizes the Exchange's rules with substantially similar rules of FINRA and other SROs. Accordingly, the modifications to EDGA Rules 2.3 and 11.4 and the Interpretations to Rule 2.5 promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act[19] and paragraph (f)(6) of Rule 19b–4 thereunder.[20] The Exchange asserts that the proposed rule changes: (1) Will not significantly affect the protection of investors or the public interest; (2) will not impose any significant burden on competition; (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule changes, along with a brief description and text of the proposed rule changes, at least five business days prior to the date of filing.[21] For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a ''noncontroversial'' rule change under paragraph (f)(6) of Rule 19b–4 because the Series 56 qualification examination has been adopted or will be adopted for use by NASDAQ and other SROs. The Series 56 examination also reflects a collaborative effort to adopt an appropriate qualification examination for a new registration category. In addition, the Exchange's proposal to include new requirements for Members to maintain at least two Principals, a CCO and a FINOP, harmonizes the Exchange's rules with substantially similar rules of FINRA and other SROs.

The rule changes as proposed will allow the Exchange to recognize a new category of limited representative registration for proprietary traders. The Exchange believes that Authorized Traders of Members who engage solely in proprietary trading, obtain the Series 56 license, and wish to register with EDGA would be disadvantaged by having to wait for the proposed rule changes to become operative. Accordingly, because the Exchange believes that implementation of the standards proposed in this filing is

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(c)(3)(B).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4.

[21] 17 CFR 240.19b–4(f)(6).

important to its maintenance of a fair and orderly market and is non-controversial, the Exchange requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii) under the Act.[22] Waiver of this requirement will allow the Exchange to make the examination available as soon as possible to coincide with its availability on other exchanges. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal makes the registration, qualification and continuing education requirements of EDGA comparable to those of the other exchanges and will enable EDGA to recognize the Series 56 exam as a valid qualification for proprietary traders.[23] Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml;* or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–EDGA–2012–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2012–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2012–04 and should be submitted by March 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–3470 Filed 2–14–12; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66362; File No. SR–Phlx–2012–13]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Rule 705 (Fidelity Bonds)

February 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on January 26, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III, below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 705, entitled ''Members Must Carry,'' to create new requirements regarding fidelity bonds and also rename the Rule ''Fidelity Bonds.''

The Exchange intends for this Rule to become operative on April 2, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, which are substantially set forth below in sections A, B, and C, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 705, entitled ''Members Must Carry,'' to create new requirements regarding fidelity bonds and also rename the Rule ''Fidelity Bonds,'' in substantially the same form as a rule at the Financial Industry Regulatory Authority, Inc. (''FINRA'').[3]

Currently, Exchange Rule 705 requires each member organization that is a partnership and is doing business with the public and each member organization that is a corporation to carry fidelity bonds covering its general partners and employees or covering its officers and employees in such form and in such amounts as the Exchange may require. The Rule does not apply to member organizations that are partnerships or corporations which are members of another exchange, which has comparable rules and regulations to

[3] *See* FINRA Rule 4360 ''Fidelity Bonds.''

which such member organizations are subject and with which they comply.

The Exchange proposes to adopt language similar to a FINRA Rule which would provide members and member organizations with more specific guidelines with respect to fidelity bonds and better reflect current industry practices.[4] The purpose of a fidelity bond is to protect a member or member organization against certain types of losses, including, but not limited to, those caused by the malfeasance of its officers and employees, and the effect of such losses on the member or member organization's capital.

The new proposed text would require each member and member organization that is required to join the Securities Investor Protection Corporation (''SIPC'') to maintain blanket fidelity bond coverage with specified amounts of coverage based on the member or member organization's net capital requirement, with certain exceptions. Proposed Rule 705 would require members and member organizations to maintain fidelity bond coverage that provides for per loss coverage without an aggregate limit of liability. Members or member organizations may apply for this level of coverage with any product that meets these requirements, including the Securities Dealer Blanket Bond or a properly endorsed Financial Institution Form 14 Bond. Most fidelity bonds contain a definition of the term ''loss'' (or ''single loss''), for purposes of the bond, which generally includes all covered losses resulting from any one act or a series of related acts. A payment by an insurer for covered losses attributed to a ''single loss'' does not reduce a member or member organization's coverage amount for losses attributed to other, separate acts. A fidelity bond with an aggregate limit of liability caps a member or member organization's coverage during the bond period at a certain amount if a loss (or losses) meets this aggregate threshold. The Exchange believes that per loss coverage without an aggregate limit of liability provides members and member organizations with the most beneficial coverage since the bond amount cannot be exhausted by one or more covered losses, so it will be available for future losses during the bond period.

Under the proposed Rule, a member or member organization's fidelity bond must provide against loss and have Insuring Agreements covering at least the following: fidelity, on premises, in transit, forgery and alteration, securities and counterfeit currency. The Rule requires that coverage for all Insuring Agreements be equal to 100 percent of the member or member organization's minimum required bond coverage. Members and member organizations may elect to carry additional, optional Insuring Agreements not required by the proposed Rule for an amount less than 100 percent of the minimum required bond coverage. The proposed Rule would require that a member or member organization's fidelity bond include a cancellation rider providing that the insurer will use its best efforts to promptly notify the Exchange in the event the bond is cancelled, terminated or ''substantially modified.''

The Exchange is proposing to add supplementary material to the proposed Rule text that would require members or member organizations that do not qualify for a bond with per loss coverage without an aggregate limit of liability to secure alternative coverage. Specifically, a member or member organization that does not qualify for blanket fidelity bond coverage as required by Rule 705(a)(3) would be required to maintain substantially similar fidelity bond coverage in compliance with all other provisions of the proposed Rule, provided that the member or member organization maintains written correspondence from two insurance providers stating that the member or member organization does not qualify for the coverage required by proposed Rule 705(a)(3). The member or member organization would be required to retain such correspondence for the period specified by Rule 17a–4(b)(4) of the Act.

Minimum Coverage

Proposed Rule 705 would require each member or member organization to maintain, at a minimum, fidelity bond coverage for any person associated with the member or member organization, except directors or trustees of a member or member organization who are not performing acts within the scope of the usual duties of an officer or employee. Proposed Rule 705 would require a member or member organization with a net capital requirement that is less than $250,000 to maintain minimum coverage of the greater of 120 percent of the firm's required net capital under Rule 15c3–1 of the Act or $100,000. Members or member organizations with a net capital requirement of at least $250,000 would use a table in the rule to determine their minimum fidelity bond coverage requirement. Under the proposed Rule, the entire amount of a member or member organization's minimum required coverage must be available for covered losses and may not be eroded by the costs an insurer may incur if it chooses to defend a claim. Specifically, any defense costs for covered losses must be in addition to a member or member organization's minimum coverage requirements. A member or member organization may include defense costs as part of its fidelity bond coverage, but only to the extent that it does not reduce a member or member organization's minimum required coverage under the proposed Rule.

Deductible

Proposed Rule 705 would provide for an allowable deductible amount of up to 25 percent of the fidelity bond coverage purchased by a member or member organization. Any deductible amount elected by the member or member organization that is greater than 10 percent of the coverage purchased by the member or member organization [5] would be deducted from the member or member organization's net worth in the calculation of its net capital for purposes of Rule 15c3–1 of the Act.[6] If the member or member organization is a subsidiary of another Exchange member or member organization, this amount may be deducted from the parent's rather than the subsidiary's net worth, but only if the parent guarantees the subsidiary's net capital in writing.

Annual Review

The proposed Rule would require a member or member organization (including a member or member organization that signs a multi-year insurance policy), annually as of the yearly anniversary date of the issuance of the fidelity bond, to review the adequacy of its fidelity bond coverage and make any required adjustments to its coverage, as set forth in the proposed Rule. Under proposed Rule 705(d), a member or member organization's highest net capital requirement during the preceding 12-month period, based on the applicable method of computing net capital (dollar minimum, aggregate indebtedness or alternative standard), would be used as the basis for determining the member or member organization's minimum required fidelity bond coverage for the succeeding 12-month period. The ''preceding 12-month period'' includes

[4] *See* Securities Exchange Act Release No. 63961 (February 24, 2011), 76 FR 11542 (March 2, 2011) (SR–FINRA–2010–059) (a rule change to adopt a rule of the National Association of Securities Dealers, Inc. (''NASD'') as part of the consolidation of the FINRA rulebook).

[5] The Exchange notes that a member or member organization may elect, subject to availability, a deductible of less than 10 percent of the coverage purchased.

[6] Such deduction would be based on net worth on coverage purchased by the member or member organization.

the 12-month period that ends 60 days before the yearly anniversary date of a member or member organization's fidelity bond. This would give a member or member organization time to determine its required fidelity bond coverage by the anniversary date of the bond.

Rule 705 would allow a member or member organization that has only been in business for one year and elected the aggregate indebtedness ratio for calculating its net capital requirement to use, solely for the purpose of determining the adequacy of its fidelity bond coverage for its second year, the 15 to 1 ratio of aggregate indebtedness to net capital in lieu of the 8 to 1 ratio (required for broker-dealers in their first year of business) to calculate its net capital requirement. Notwithstanding the above, such member or member organization would not be permitted to carry less minimum fidelity bond coverage in its second year than it carried in its first year.

A member or member organization would be required to immediately advise the Exchange in writing if its fidelity bond is cancelled, terminated or substantially modified.[7]

Exemptions

Proposed Rule 705 would exempt from the fidelity bond requirements members or member organizations in good standing with another national securities exchange or FINRA that maintain a fidelity bond subject to the requirements of such exchange that are equal to or greater than the requirements set forth in the proposed rule.[8] Additionally, the Rule would exempt from the fidelity bond requirements any firm that acts solely as a Registered Options Trader (''ROT''),[9] Specialist[10] or Floor Broker and does not conduct business with the public.

The Exchange intends for this Rule to become operative on April 2, 2012.2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that its proposed amendment to Exchange Rule 705 provides specificity to the Rule. The proposed amendment to the Rule requires members and member organizations to continue to carry fidelity bonds, but also provides additional specificity regarding the amount of coverage. This Rule will update and clarify the requirements governing fidelity bonds consistent with industry practice.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)[14] thereunder.

The Exchange intends for Rule 705 to become operative on April 2, 2012. This operative delay will allow members or member organizations that are not exempt from the Rule to comply with the requirements set forth under the Rule.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

[7] *See* Proposed Rule 705(e).

[8] In general, the notification provisions of the corresponding exchange rules (i.e., cancellation rider and notification upon cancellation, termination or substantial modification of the bond) require notification to the respective exchange rather than to the Exchange or FINRA. Accordingly, the practical effect for a member or member organization that avails itself of the proposed exemption is that such member or member organization must maintain a fidelity bond subject to the same or greater requirements as in proposed Rule 705; however, such member or member organization would be exempt from the requirement that the Exchange be notified of changes to the bond and would alternatively comply with the notification provisions of the respective exchange or FINRA.

[9] An ROT includes a Streaming Quote Trader (''SQT''), a Remote Streaming Quote Trader (''RSQT'') and a Non-SQT, which by definition is neither a SQT or an RSQT. An ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014 (b)(i) and (ii). An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[10] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to File Number SR–Phlx–2012–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2012–13 and should be submitted on or before March 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–3469 Filed 2–14–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66367; File No. SR–Phlx–2012–15]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Rebates and Fees for Adding and Removing Liquidity in Select Symbols

February 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rebates and Fees for Adding and Removing Liquidity in Select Symbols in Section I, Part A of the Exchange's Fee Schedule.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on February 1, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Section I of the Fee Schedule, entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' at Part A, entitled ''Single contra-side orders,'' to amend the Customer Fee for Removing Liquidity to increase the fee in order to recoup additional costs associated with paying rebates to attract additional order flow.

Currently, Section I of the Fee Schedule, which applies to certain select symbols,[3] is comprised of a Part A, Single contra-side order fees, and a Part B, Complex Order fees.[4] There are currently several categories of market participants: Customers, Directed Participants,[5] Specialists,[6] Registered Options Traders,[7] SQTs,[8] RSQTs,[9] Broker-Dealers, Firms and Professionals.[10] Currently, the Exchange assesses the following Single contra-side Fees for Removing Liquidity:

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Select Symbols are defined as options overlying the following symbols: AA, AAPL, ABX, AMD, AMR, AMZN, AXP, BAC, C, CAT, CIEN, CSCO, DELL, DIA, EBAY, EK, F, FAS, FAZ, FXI, GDX, GE, GLD, GLW, GS, HAL, IBM, INTC, IWM, JPM, LVS, MGM, MSFT, MU, NEM, NOK, NVDA, ORCL, PFE, PG, POT, QCOM, QQQ, RIG, RIMM, RMBS, SBUX, SDS, SIRI, SLV, SLW, SNDK, SPY, T, TBT, TZA, UAL, UNG, USO, UUP, V, VALE, VXX, VZ, WYNN, X, XLF, XOM, XOP and YHOO (''Select Symbols''). These symbols are Multiply-Listed.

[4] The Rebates and Fees for Adding and Removing Liquidity in Select Symbols apply only to electronic orders.

[5] A Directed Participant is a Specialist, SQT, or RSQT that executes a Customer order that is directed to them by an Order Flow Provider and is executed electronically on PHLX XL II.

[6] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[7] A Registered Options Trader (''ROT'') includes a Streaming Quote Trader (''SQT''), a Remote Streaming Quote Trader (''RSQT'') and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014(b)(i) and (ii).

[8] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[9] An RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[10] The Exchange defines a ''professional'' as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter ''Professional'').

%	Customer	Directed participant	Specialist, ROT, SQT and RSQT	Firm	Broker-dealer	Professional
Fee for Removing Liquidity	$0.31	$0.35	$0.37	$0.45	$0.45	$0.45

The Exchange proposes to increase the Customer Fee for Removing Liquidity for Single contra-side orders from $0.31 per contract to $0.39 per contract. The Exchange is not proposing to amend any other rebates or fees in Section I.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on February 1, 2012.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Act [12] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that its proposal to increase the Single contra-side Customer Fee for Removing Liquidity is reasonable because the Customer would pay a lower fee as compared to all other market participants except market makers,[13] which includes Directed Participants. Market makers have obligations to the market, which do not apply to Firms, Professionals and Broker-Dealers.[14] Also, Directed Participants have higher quoting obligations as compared to other market makers.[15] In addition, the Exchange is filing this proposal to recoup costs associated with paying Customers higher rebates to attract order flow to the Exchange.[16] Customers will continue to receive the highest Rebate for Adding Liquidity, which rebate incentivizes Broker-Dealers to route Customer orders to the Exchange, which in turn should increase liquidity and benefit all market participants. Also, the fee is within the range of fees assessed by NYSE Arca, Inc. (''NYSE Arca'') [17] and NASDAQ Stock Market LLC.[18]

The Exchange believes it is equitable and not unfairly discriminatory to increase the Customer Fee for Removing Liquidity because, as mentioned, compared to other participants, except market makers,[19] Customers would pay the lowest Fee for Removing Liquidity and Customers would also receive the highest Rebate for Adding Liquidity as compared to other market participants.[20] In addition, as previously mentioned, the Exchange is filing this proposal to recoup costs associated with paying Customers higher rebates to attract order flow to the Exchange.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the fees it charges and rebates it pays for options overlying the various Select Symbols remain competitive with fees and rebates charged/paid by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[21] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2012–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2012–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] A ''market maker'' includes Specialists (*see* Rule 1020) and ROTs (Rule 1014(b)(i) and (ii), which includes SQTs (*see* Rule 1014(b)(ii)(A)) and RSQTs (*see* Rule 1014(b)(ii)(B)). Directed Participants are also market makers. *See* note 5.

[14] *See* Exchange Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[15] *See* Exchange Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[16] The Exchange recently increased the Rebate for Adding Liquidity for Professionals. *See* Securities Exchange Act Release No. 65940 (December 12, 2011), 76 FR 78322 (December 16, 2011) (SR–Phlx–2011–162).

[17] *See* NYSE Arca's Fee Schedule. A customer executing an electronic order is assessed a $0.45 per contract fee to remove liquidity in Penny Pilot Issues.

[18] *See* NASDAQ Stock Market LLC's Rules at Chapter XV, Section 2. A NASDAQ Options Market (''NOM'') Participant is assessed a $0.45 per contract fee for removing liquidity electronically in Penny Pilot Options and non-Penny Pilot Options.

[19] *See* note 13.

[20] The Exchange recently decreased the Professional Rebate for Adding Liquidity for Single contra-side orders to $0.23 per contract. The rule change was filed as immediately effective with an operative date of January 3, 2012. *See* SR–Phlx–2011–184.

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2012–15 and should be submitted on or before March 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–3536 Filed 2–14–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66369; File No. SR–NASDAQ–2012–024]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ's Pre-Market Investor Program

February 10, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to modify its NASDAQ's Pre-Market Investor Program. NASDAQ proposes to implement the proposed rule change on February 1, 2011. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Last year, NASDAQ introduced a Pre-Market Investor Program to encourage greater use of NASDAQ's facilities for trading before the market open at 9:30 a.m. and through the trading day.[3] The goal of the program is to encourage the development of a deeper, more liquid trading book during pre-market hours, while also recognizing the correlation observed by NASDAQ between levels of liquidity provided during pre-market hours and levels provided during regular trading hours. While maintaining the structure of the existing program, NASDAQ is now proposing to modify the program to also encourage greater use of NASDAQ's facilities for trading after the market close at 4 p.m. In connection with the change, NASDAQ will also rename the program as the ''Extended Hours Investor Program'' (''EHIP'').

Under the program, a member is required to designate one or more market participant identifiers (''MPIDs'') for use under the program.[4] The member will then qualify for an extra rebate of $0.0002 per share executed[5] with respect to all displayed liquidity provided through a designated MPID that executes at a price of $1 or more during the month if the following conditions are met:

(1) The MPID's ''EHIP Execution Ratio''[6] for the month is less than 10. The EHIP Execution Ratio is defined as ''the ratio of (A) the total number of liquidity-providing orders entered by a member through an EHIP-designated MPID during the specified time period to (B) the number of liquidity-providing orders entered by such member through such EHIP-designated MPID and executed (in full or partially) in the Nasdaq Market Center during such time period; provided that: (i) No order shall be counted as executed more than once; and (ii) no Pegged Orders, odd-lot orders, or MIOC or SIOC orders[7] shall be included in the tabulation.'' Thus, the requirement stipulates that a high proportion of potentially liquidity-providing orders entered through the MPID actually execute and provide liquidity. This requirement is designed to focus the availability of the program on members representing retail and institutional customers.

(2) Currently, the member must provide an average daily volume of 2 million or more shares of liquidity during the month using orders that are executed prior to NASDAQ's Opening Cross. NASDAQ has observed that members that provide higher volumes of liquidity-providing orders during the pre-market hours generally do so throughout the rest of the trading day. Accordingly, the program pays a credit with respect to all liquidity-providing orders, but only in the event that comparatively large volumes of such orders execute in pre-market hours. To broaden the focus of the program to include after-hours trading, NASDAQ is proposing to modify this provision to provide an alternative criterion for participation in the program, but without removing or modifying the

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 65717 (November 9, 2011), 76 FR 70784 (November 15, 2011) (SR–NASDAQ–2011–150).

[4] After the initial designation of NASDAQ MPIDs for EHIP use, a member may add or remove such EHIP designations for existing MPIDs, provided that NASDAQ must be appropriately notified of such a change on or before the first trading day of the month when the change is to become effective. A newly established MPID may be designated for EHIP use immediately upon establishment.

[5] Originally, the rebate was set at $0.0001 per share executed, but effective February 1, 2012, NASDAQ increased the rate to $0.0002 per share executed. *See* SR–NASDAQ–2012–020 (January 27, 2012).

[6] Formerly, the PMI Execution Ratio.

[7] ''Market Hours Immediate-or-Cancel'' or ''System Hours Immediate-or-Cancel'' orders.

existing criteria. Specifically, a member may also satisfy the volume requirement if the member provides an average daily volume of 3 million or more shares of liquidity during the month using orders that are entered through its designated MPID and executed prior to the Nasdaq Opening Cross and/or after the Nasdaq Closing Cross. Thus, the modified volume criteria may be satisfied either through substantial activity during pre-market trading hours, or by substantial activity spread across the pre-market and after-hours trading sessions.

(3) The ratio between shares of liquidity provided through the MPID and total shares accessed, provided, or routed through the MPID during the month is at least 0.80. This requirement reflects the program's goal of encouraging members that provide high levels of liquidity in the pre-market and/or after-hours trading sessions to also do so during the rest of the trading day.

The modified program is similar to a fee provision of the EDGX Exchange under which a favorable execution fee and rebate are offered to members that make significant use of the EDGX Exchange's facilities during pre-market and/or post-market hours.[8]

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(4) and (5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated members are subject to the same fee structure, and access to NASDAQ is offered on fair and non-discriminatory terms.

The Pre-Market Investor Program, now renamed with Extended Hours Investment Program, is designed to attract greater liquidity to NASDAQ, with a particular emphasis on encouraging a deeper and more liquid book during pre-market and post-market hours and recognizing and further encouraging the observed correlation between liquidity provision during pre-market and post-market hours and throughout the trading day. The EHIP provides an additional credit to members that satisfy criteria designed to be indicative these patterns of market participation. Thus, a participant in the program is required to designate MPIDs with a low ratio between orders entered and executions; to provide a specified volume of liquidity during pre-market hours, or pre-market and/or post-market hours; and to maintain a high ratio of liquidity provision to order execution throughout the month.

The EHIP is not unfairly discriminatory because it is intended to promote submission of liquidity-providing orders to NASDAQ, which benefits all NASDAQ members and all investors. Likewise, the EHIP is consistent with the Act's requirement for the equitable allocation of reasonable dues, fees, and other charges. Members who choose to significantly increase the volume of EHIP-eligible liquidity-providing orders that they submit to NASDAQ would be benefitting all investors, and therefore providing credits to such members, as contemplated in the proposed enhanced program, is equitable. Moreover, NASDAQ believes that the level of the credit—$0.0002 per share, in addition to credits ranging from $0.0020 to $0.00295 per share for displayed liquidity under NASDAQ regular transaction execution fee and rebate schedule—is reasonable.

NASDAQ further believes that expanding the program to incentivize greater participation in the after-hours trading session is not unfairly discriminatory, because it will promote still further the provision of liquidity, which benefits all market participants, and will broaden the availability of the offered rebate to a greater number of market participants. Similarly, NASDAQ believes that the expansion of the program is consistent with the equitable allocation of fees, because it will further incentivize members to provide liquidity. NASDAQ further believes that the expansion is reasonable, because it will reduce the fees paid by a larger number of market participants.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that all aspects of the proposed rule change reflect this competitive environment because the change is designed to increase the credits provided to members that enhance NASDAQ's market quality through liquidity provision.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. The proposed changes will enhance competition by offering a higher rebate to more market participants. In addition, the change will enhance competition with the EDGX Exchange, which encourages participation in its pre-market and post-market trading sessions by means of favorable pricing offered to members that are active during pre-market and/or post-market hours.[11]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and subparagraph (f)(2) of Rule 19b–4 thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[8] *http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx.*

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx.*

[12] 15 U.S.C. 78s(b)(3)(a)(ii)[sic].

[13] 17 CFR 240.19b–4(f)(2).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2012–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–024 and should be submitted on or before March 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–3556 Filed 2–14–12; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66364; File No. SR–FINRA–2011–064]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Adopting FINRA Rule 4524 (Supplemental FOCUS Information) and Proposed Supplementary Schedule to the Statement of Income (Loss) Page of FOCUS Reports

February 9, 2012.

I. Introduction

On November 1, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] proposed FINRA Rule 4524 (Supplemental FOCUS Information) to require each member, as FINRA shall designate, to file such additional financial or operational schedules or reports as FINRA may deem necessary as a supplement to the FOCUS report. The proposed rule change was published for comment in the **Federal Register** on November 14, 2011.[3] The Commission received five comments on the proposed rule change.[4] FINRA filed Amendment No. 1 on February 8, 2012, which was subsequently withdrawn.[5] FINRA filed Amendment No. 2 to the proposed rule change on February 8, 2012.[6] The Commission is publishing this notice and order to solicit comments on Amendment No. 2 and to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of Proposed Rule Change

Pursuant to Exchange Act Rule 17a–5, FINRA members are required to file with FINRA reports concerning their financial and operational status using SEC Form X–17A–5, Financial and Operational Combined Uniform Single (FOCUS) Report.[7] FINRA is proposing to adopt FINRA Rule 4524, which provides that as a supplement to filing FOCUS reports pursuant to Exchange Act Rule 17a–5 and FINRA Rule 2010, each member, as FINRA shall designate, shall file such additional financial or operational schedules or reports as FINRA may deem necessary or appropriate for the protection of investors or in the public interest. FINRA Rule 4524 also provides that FINRA will specify the content of such additional schedules or reports, their format, and the timing and the frequency of such supplemental filings in a Regulatory Notice (or similar communication) issued pursuant to the Rule. Finally, FINRA Rule 4524 provides that FINRA will file with the Commission pursuant to Exchange Act Section 19(b) the content of any such *Regulatory Notice* (or similar communication) issued pursuant to the Rule.

Pursuant to proposed FINRA Rule 4524, FINRA is proposing a Supplemental Statement of Income (''SSOI'') to magnify the data from the Statement of Income (Loss) page of the FOCUS Reports. The proposed SSOI is intended to capture more granular detail of a firm's revenue and expense information. The lack of more specific revenue and expense categories for certain business activities on the Statement of Income (Loss) page of the FOCUS Reports has led many firms to report much of their revenue and expenses as ''other'' (miscellaneous), a very general categorization that provides FINRA limited visibility into revenue and expense trends. The proposed SSOI is divided into sections containing line items that seek additional detail to permit FINRA to better understand revenue sources and expense composition on an ongoing basis. This additional detail would allow FINRA to better assess risk at a firm, and as a result, better allocate examination resources. As modified by Amendment No. 2, each member would be required

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65700 (November 7, 2011), 76 FR 70523 (November 14, 2011).

[4] *See* Letter from Pat Nelson, dated November 30, 2011 (''Nelson''); George Hessler, Stock USA Execution Services, Inc., to Marcia Asquith, Secretary, FINRA, dated November 25, 2011 (''Stock USA''); Holly H. Smith and Susan S. Krawczyk, Sutherland Asbill & Brennan LLP, for the Committee of Annuity Insurers, to Elizabeth M. Murphy, Secretary, SEC, dated December 5, 2011 (''CAI''); Howard Spindel and Cassondra E. Joseph, Integrated Management Solutions USA LLC, dated December 5, 2011 (''IMS letter''); Nancy Brda to Elizabeth M. Murphy, Newedge USA, LLC, dated December 5, 2011 (''Newedge'') (*Available at http://www.sec.gov/comments/sr-finra-2011-064/finra2011064.shtml).*

[5] Amendment No. 1, dated February 8, 2012, was withdrawn on February 8, 2012.

[6] *See* Amendment No. 2 dated February 8, 2012 (''Amendment No. 2''). The text of Amendment No. 2 is available on FINRA's Web site at *http:www.finra.org,* at the principal office of FINRA, and on the Commission's Web site, *http://www.sec.gov/rules/sro.shtml.*

[7] 17 CFR 240.17a–5.

to file with FINRA the proposed SSOI within 20 business days of the end of each calendar quarter.

The proposed SSOI contains a *de minimis* exception for providing details of revenue and expenses for certain designated sections. If a member's total dollar amount for a designated section is $5,000 or less for the reporting period, the member would only be required to enter the total dollar amount to complete the section. As modified by Amendment No. 2, the reporting threshold has been amended to include as a component to the *de minimis* exception for certain designated sections a percentage of gross revenue threshold. Additionally, not every line item would apply to every member, especially those with limited product offerings, thus limiting the burden of completing the form.

The proposed SSOI includes a new Operational Page that would collect additional information from certain members with respect to participation in unregistered offerings during the reporting period. Members whose revenue from unregistered offerings exceeds 10% of total revenue for the reporting period would be required to complete the Operational Page by providing specific information about each unregistered offering. FINRA believes that such information would provide it with greater transparency and a stronger understanding regarding the types of unregistered offerings that generate significant revenue for members.

FINRA will announce the implementation dates of the proposed SSOI in a *Regulatory Notice* to be published no later than 60 days following Commission approval of the proposed rule change. The implementation date of the proposed schedule will be no sooner than 180 days, and no later than 365 days, following Commission approval of the proposed rule change.

III. Summary of Comment Letters

The proposed rule change was published for comment in the **Federal Register** on November 14, 2011, and the comment period closed on December 5, 2011. The Commission received five comment letters in response to the proposed rule change.[8] On February 8, 2012, FINRA responded to the comments and filed Amendment No. 2 to the proposed rule change.[9]

A. Reporting Threshold

Several commenters expressed concerns that the reporting threshold was too low and should be raised.[10] One commenter suggested moving to a range that would allow a large firm with significant revenues to have a *de minimis* exception in the range of $250,000–$500,000.[11] Two commenters thought the $5,000 threshold was too low and suggested a reporting threshold of $10,000 or of 5% or 10% of gross revenue (*i.e.,* firms would not be required to report any information on product lines that represented less than 5% or 10% of their gross revenue).[12] One commenter suggested a *de minimis* exception for items less than $25,000.[13] This commenter also expressed concerns that the proposal was anti-small business, because it required the same level of detail for every broker-dealer.[14]

In its response to comments, FINRA stated that Amendment No. 2 amends the SSOI and the instructions to include as a component of the *de minimis* exception for certain designated sections a percentage of the gross revenue threshold.[15] FINRA explained that if the aggregate amount for the designated section is less than the greater of $5,000 or 5% of the firm's total revenue or total expense, as applicable, for a reporting period, the member would only be required to enter the aggregate amount to complete the section. FINRA also stated that it added a *de minimis* exception for the revenue from sale of insurance based products section on the SSOI. Finally, FINRA stated that it had clarified language on the SSOI and the instructions regarding the reporting thresholds for other expenses and other revenue.

B. Filing Time Frame

One commenter suggested that firms needed additional time to file the SSOI.[16] Since the FOCUS filings are due on the 17th business day of the month, the commenter suggested an additional 3–5 days to submit the Supplemental Filing after the FOCUS report would be helpful.[17] In its Response to Comments FINRA stated that it recognizes that the new report will involve an additional amount of work for members and believes that it is reasonable to give members an additional three business days to file the SSOI. FINRA, therefore, amended its proposal to require the SSOI to be filed within 20 business days after the end of the calendar quarter.[18]

C. Instructions and Definitions

One commenter believes that FINRA should provide more precise definitions for certain product lines on the SSOI, in order to avoid duplicative or inconsistent reporting.[19] This commenter also stated that FINRA should define more precisely the product lines listed on the SSOI.[20] Another commenter believes that the instructions could be construed as misleading, because of the choices available for a firm to use ''firm selected methodology'' (*i.e.,* firm discretion).[21]

In its Response to Comments, FINRA stated that for certain revenue items, where specific and/or detailed instructions are not provided on the SSOI, FINRA expects firms to report the revenue in accordance with the definition and/or methodology used for preparing the FOCUS report. FINRA further stated that it believed the instructions to the SSOI contained sufficient clarity for certain definitions, such as ''commodities,'' ''corporate debt,'' ''US Government and Agency Securities,'' and ''asset backed securities;'' however, FINRA clarified the instructions with respect to the term ''foreign exchange.'' FINRA also added instructions regarding non-securities insurance based products. Finally, FINRA stated that the term ''derivatives other than listed or unlisted options'' does not appear in the proposed SSOI.[22]

D. Small Firm Concerns

One commenter believes that FINRA should make available a less detailed SSOI to small broker-dealers.[23] Another commenter was concerned that the new categories of product lines will be difficult to complete and that firms may make mistakes when completing the report, leading to fines levied for late or incorrect submissions.[24]

In its Response to Comments, FINRA stated that it believed the information being required in the SSOI is important to identify regulatory risks and trends, irrespective of firm size. FINRA also explained that many of the line items will not apply to smaller firms with limited product offerings. Further,

[8] *See supra* note 4.

[9] *See supra* note 5. On December 21, 2011, FINRA extended the time period for Commission action until February 10, 2012. *See http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p125317.pdf.*

[10] CAI; Newedge; IMS; Stock USA.

[11] CAI.

[12] Newedge; IMS.

[13] Stock USA.

[14] *Id.*

[15] *See* Letter from Matthew E. Vitek, Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission dated February 8, 2012 (''Response to Comments'').

[16] Newedge.

[17] *Id.*

[18] Response to Comments.

[19] Newedge.

[20] *Id.*

[21] IMS.

[22] Response to Comments.

[23] IMS.

[24] Stock USA.

FINRA reiterated that it was modifying the SSOI to broaden the *de minimis* exception, making the form much less complicated and time consuming for smaller firms, and that the form should not require sophisticated systems to generate the information.[25]

E. Reporting Exemption

One commenter believes that firms that ''do not engage in risky business lines, and who provide financial information that is already transparent'' should be exempted from completing the SSOI.[26] As an example, the commenter suggested that mutual fund wholesalers and variable annuity principal underwriters and wholesalers that are limited purpose broker-dealers are categories of firms that should be exempted.[27] One commenter also discussed the role the supplemental filing would play with respect to a broker-dealer's annual audit.[28]

In its Response to Comments, FINRA stated that it does not agree that firms such as variable annuity principal underwriters and wholesalers should be exempt. FINRA believes the required information is important to identify revenue sources, enable FINRA to segment firms, and identify regulatory risk and trends without regard to the business model of the member or whether a particular business segment or product line has raised recent regulatory concerns.[29] FINRA also noted that revenue streams of variable annuity principal underwriters and wholesalers are not transparent from the FOCUS report as it currently exists.[30] Finally, FINRA noted that many of the line items will not apply to firms with limited product offerings, such as mutual fund wholesalers and variable annuity principal underwriters and wholesalers.[31]

F. Exemption From Operational Page Reporting

One commenter, CAI, suggested that there was an inconsistency between the proposed Operational Page and FINRA offering rules, specifically FINRA Rule 5110.[32] CAI notes that FINRA Rule 5110 exempts ten types of offerings from the rule, including offerings of open and closed-end investment companies, offerings of variable annuities, and offerings of modified guaranteed annuity contracts and modified guaranteed life insurance policies.[33] CAI suggested that there is an inconsistency between the proposed Operational Page and certain FINRA offering rules, stating, ''that offerings that are exempted from FINRA offering rules should not be subject to the Operational Page.'' [34]

In response to these concerns, FINRA explained its view that the commenter did not recognize the different purposes the Operational Page serves from FINRA Rule 5110. The Operational Page of the SSOI is intended to provide FINRA with greater transparency as to the source of the revenues associated with unregistered offerings when such revenues are a material percentage of a firm's overall revenues. FINRA Rule 5110 regulates the underwriting terms and arrangements of most public offerings of securities sold through FINRA members. While not subject to FINRA Rule 5110, information about the exempted offerings identified by this commenter would provide FINRA with a better understanding regarding the types of unregistered offerings that generate significant revenue for members. In this regard, FINRA notes that it has found significant problems in several recent examinations and investigations, including fraud and sales practice abuses in Regulation D offerings.[35] FINRA further noted that the SSOI would not be a report that is required to be audited under Exchange Act Rule 17a–5.

G. Reporting Issues

One commenter stated that FINRA should give more consideration to member practices and procedures with respect to their books and records.[36] This commenter stated that firms organize ''revenue data based on internal definitions of business lines and to comply with generally accepted accounting principles (''GAAP''). These internal categories allocate income based on how member firms view the nature and scope of their business lines.'' [37] The commenter believes, therefore, that FINRA's proposed schedule, which requires reporting by product lines, contradicts GAAP rules and procedures. The commenter also believes that, ''FINRA is artificially forcing firms to differentiate income generated by investments from that of trading by requiring that revenue be reported by how the income might be taxed.'' [38] Further, this commenter noted that FINRA's stated purpose of obtaining more granular information is not achieved, because the proposal allows for a dozen separate categories for trading income data but only one line for capital gains or losses related to longer-term investments.[39]

In its Response to Comments, FINRA disagreed that the proposal is at odds with member practices. FINRA stated that the SSOI is similar to the FOCUS Report in that it requires members to break-out revenues based on product line and distinguishes between trading and investment gains. FINRA also stated that requesting information to be reported by product line is not inconsistent with GAAP. Further, the instructions to the SSOI require that all revenue and expense items must be reported in accordance with GAAP. With respect to breaking out trading revenue data compared to investment capital gains or losses, FINRA believes that more granular detail for trading revenue is warranted because the regulatory risks associated with trading activities differ from the regulatory risks associated with longer-term investment activities.

H. Alternatives

Two commenters suggested alternatives to the SSOI. One commenter asked if FINRA had researched and considered other alternatives to obtain the same information on the SSOI in another manner.[40] Another commenter suggested that FINRA establish a joint task force to consider producing a revised FOCUS report.[41]

In response to these objections to the SSOI, FINRA reiterated its previous statement that it considered various alternatives and believes that the SSOI is the most effective and timely way to obtain the additional detail of revenues earned or expenses incurred by product or more specific categories. Further, FINRA notes that it consulted with its advisory committees in connection with the development of the proposed SSOI.

I. Future Reports or Schedules

Several commenters expressed concerns about the implementation of future FINRA reports or schedules.[42] These commenters thought that

[25] Response to Comments.
[26] CAI.
[27] *Id.*
[28] *Id.*
[29] Response to Comments.
[30] *Id.*
[31] *Id.*
[32] CAI.
[33] *Id.*
[34] *Id.*
[35] Response to Comments (citing FINRA *Regulatory Notice* 10–22 (April 2010) in regard to Regulation D offerings and FINRA press release regarding sanction of eight firms and ten individuals for selling interests in troubled private placements).
[36] IMS.
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] Nelson.
[41] IMS.
[42] CAI; Nelson; Stock USA.

publication via a *Regulatory Notice* was insufficient and suggested that any future schedules or reports be done through the more typical self-regulatory organization (''SRO'') proposed rule change process.[43] In its Response to Comments FINRA stated that it has modified the proposed rule change to clarify that all future reports or schedules will be filed with the Commission pursuant to Exchange Act Section 19(b).[44] Thus, commenters will be assured of having an opportunity to comment on any request for such additional substantive information made pursuant to the proposed rule, which must be approved by the Commission before it can become effective.

J. Implementation Date

One commenter suggested an alternative compliance effective date of no sooner than 365 days following the Commission's approval of the proposed rule change because members not already collecting this information will require much more time than larger firms to implement the operational and system changes the SSOI necessitates.[45] The commenter noted that many of its members are ''mid-sized firms that will not have the granular, detailed financial information required by the SSOI at their fingertips.'' [46]

In its Response to Comments, FINRA stated that it disagrees with the commenter and believes that the proposed implementation date, which would be no sooner than 180 days and no later than 365 days following SEC approval, strikes the proper balance of ensuring FINRA receives timely information while giving members sufficient time to file the first proposed SSOI.

K. SRO Rulemaking

Several commenters were concerned that FINRA did not conduct a cost-benefit analysis in its rule proposal. Specifically, one commenter stated that FINRA should conduct a more rigorous and detailed cost-benefit analysis that the industry can use to consider alternatives to the rule proposal.[47] Other commenters were concerned about the overall lack of a detailed cost-benefit analysis by both the Commission and FINRA.[48] Stock USA believes that a better justification is needed, to show ''how the proposed rule will be used to enhance its meeting of both the economic and protective provisions of Section 15A(b)(6) of the Exchange Act.'' [49]

In its Response to Comments, FINRA noted that it believed it had complied with its rulemaking obligations under the Exchange Act, by submitting a ''concise general statement of the basis and purpose'' of its proposed rule. FINRA believes its proposed rule will ''further strengthen FINRA's ability to protect investors through a more informed understanding of the drivers of members' business that can be used for more targeted examinations and to understand trends in those drivers that may portend greater risk to the firm and the protection of customer assets.'' [50] FINRA also noted that the burden arising from completing the SSOI is outweighed by FINRA's enhanced ability to protect investors by having a more detailed understanding of members' sources of revenue and expense drivers.[51]

L. Comment Period

One commenter noted that the twenty-one day comment period did not allow firms sufficient time to properly estimate the costs associated with the operational and systems changes needed to complete the SSOI.[52] In its Response to Comments, FINRA noted that the length of a comment period is determined by the SEC and therefore outside the scope of its response.[53]

M. FINRA's Authority

One commenter questioned FINRA's authority to adopt a supplement to the FOCUS report and stated that no one has addressed the role such a supplement would play with respect to a broker-dealer's annual audits.[54] In response, FINRA stated that as a general matter the proposed rule is consistent with Section 15A(b)(6) of the Exchange Act and is ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and, ''in general, to protect investors and the public interest.'' [55] FINRA further stated that with respect to the role the SSOI would play with respect to a broker-dealer's annual audits, the SSOI is not one of the reports required to be audited under Exchange Act Rule 17a–5 and that FINRA does not expect or require the SSOI to be audited unless the auditor believes there is a concern for such review.[56]

IV. Commission's Findings

The Commission has carefully considered the proposed rule change, the comments received, Amendment No. 2, and FINRA's Response to Comments. The Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder that are applicable to a national securities association.[57] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[58] which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

Proposed FINRA Rule 4524 and the SSOI will provide FINRA with the ability to obtain more specific information about the finances of a member broker-dealer. The Commission believes that the proposed rule change works in conjunction with the existing Commission broker-dealer financial responsibility rules and will further FINRA's ability to oversee its members by, among other things, increasing the transparency of the various revenue streams and sources of income of broker-dealers. For example, FINRA noted in its Response to Comments that FINRA has found significant problems in several recent examinations and investigations, including fraud and sales practice abuses in Regulation D offerings.[59] The Commission believes the proposed rule change will give FINRA greater ability to examine the revenues of its members and therefore improve its ability to, among other things, uncover fraudulent and abusive practices that undermine public confidence in the securities markets and thus impede efficiency and capital formation.

With respect to commenter concerns that the proposed rule change would give FINRA the ability to circumvent filing proposed rule changes with the Commission and thus avoid the notice and comment process attendant thereto,

[43] Stock USA; Nelson; CAI.

[44] Response to Comments.

[45] CAI.

[46] *Id.*

[47] *Id.*

[48] Newedge; Nelson.

[49] Stock USA.

[50] Response to Comments.

[51] *Id.*

[52] CAI.

[53] Response to Comments.

[54] CAI.

[55] Response to Comments.

[56] *Id.*

[57] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[58] 15 U.S.C. 78*o*–3(b)(6).

[59] *See* Response to Comments.

FINRA has clarified the proposed rule change in Amendment No. 2 to make clear that any such new reports or schedules will be filed with the Commission pursuant to Exchange Act Section 19(b).[60] Accordingly, the proposed rule change is clear that interested parties will have opportunity to have notice of, and comment upon, future schedules or reports issued by FINRA under FINRA Rule 4524.

The Commission believes that FINRA carefully considered all comments on the proposal and has responded appropriately. FINRA's Amendment No. 2 changed the proposed rule change in response to commenter concerns to provide broker-dealers with additional time to file the SSOI and to include an additional component to the *de minimis* exception based on a percentage of gross revenue threshold. FINRA has suitably explained its reasons for declining to amend Rule 4524 and the SSOI in response to the remainder of comments it received.

V. Accelerated Approval

The Commission finds goods cause, pursuant to Section 19(b)(2) of the Act[61] for approving the proposed rule change, as modified by Amendment No. 2 thereto, prior to the 30th day after publication of Amendment No. 2 in the **Federal Register**. The changes proposed in Amendment No. 2 respond to specific concerns raised by the commenters and do not raise regulatory concerns.

Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 2, on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 2 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–064 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–FINRA–2011–064. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–064 and should be submitted on or before March 7, 2012.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[62] that the proposed rule change (SR–FINRA–2011–064), as modified by Amendment No. 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[63]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–3471 Filed 2–14–12; 8:45 am]

BILLING CODE 8011–01–P

[60] The Commission notes that such reports or schedules, or changes to any existing reports or schedules, fall within the definition of ''rules of an association'' under Exchange Act Section 3(a)(27), subject to the self-regulatory organization rulemaking provisions set forth in Exchange Act Section 19(b) and Rule 19b–4 thereunder.

[61] 15 U.S.C. 78s(b)(2).

[62] 15 U.S.C. 78(b)(2).

[63] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before March 16, 2012. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION: *Title:* ''Intellectual Property and Women Entrepreneurs.''

Frequency: On Occasion.

SBA Form Number: N/A.

Description of Respondents: Women Entrepreneurs.

Responses: 60.

Annual Burden: 100.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2012–3539 Filed 2–14–12; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13002 and # 13003]

Alabama Disaster Number AL–00040

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major

disaster for the State of Alabama (FEMA–4052–DR), dated 02/01/2012.

Incident: Severe Storms, Tornadoes, Straight-Line Winds, and Flooding.

Incident Period: 01/22/2012 through 01/23/2012.

Effective Date: 02/07/2012.

Physical Loan Application Deadline Date: 04/02/2012.

EIDL Loan Application Deadline Date: 11/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Alabama, dated 02/01/2012 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Perry.

Contiguous Counties: (Economic Injury Loans Only):

Alabama: Hale, Marengo.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–3456 Filed 2–14–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Women's Business Council Meeting

U.S. Small Business Administration.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the National Women's Business Council (NWBC). The meeting will be open to the public.

DATES: The meeting will be held on March 1, 2012 from approximately 1:15 p.m. to 4 p.m. EST.

ADDRESSES: The meeting will be held at the U. S. Patent and Trademark Office, Madison Auditorium, 600 Dulany Street, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the National Women's Business Council. The National Women's Business Council is tasked with providing policy recommendations on issues of importance to women business owners to the President, Congress, and the SBA Administrator.

The purpose of the meeting is to introduce the NWBC's research agenda and action items for fiscal year 2012 included but not limited to procurement, access to capital, access to training and technical assistance, and affordable health care. The topics to be discussed will include 2012 projects.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to attend or make a presentation to the NWBC must either email their interest to *info@nwbc.gov* or call the main office number at 202–205–3850.

Those needing special accommodation in order to attend or participate in the meeting, please contact 202–205–3850 no later than February 27, 2012.

For more information, please visit our Web site at *www.nwbc.gov.*

Dan S. Jones,

SBA Committee Management Officer.

[FR Doc. 2012–3538 Filed 2–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 7798]

Culturally Significant Objects Imported for Exhibition Determinations: ''Rembrandt's Self-Portrait''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition ''Rembrandt's Self-Portrait,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit object at the Metropolitan Museum of Art, New York, NY from on or about April 5, 2012 until on or about May 28, 2012; and, as part of an exhibition called ''Gainsborough, Rembrandt, Van Dyck: The Treasures of Kenwood House, London,'' the further display of the object at the Museum of Fine Arts, Houston from on or about June 3, 2012 until on or about September 4, 2012; the Milwaukee Art Museum from on or about October 4, 2012 until on or about January 6, 2013; the Seattle Art Museum from on or about February 14, 2013 until on or about May 19, 2013; and the Arkansas Art Center from on or about June 6, 2013 until on or about September 9, 2013; and at possible additional exhibitions or venues yet to be determined; is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 9, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–3554 Filed 2–14–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7797]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Dawn of Egyptian Art''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''The Dawn of Egyptian Art,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the

foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY from on or about April 2, 2012, until on or about August 5, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 9, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–3555 Filed 2–14–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0074; Notice 1]

Chrysler Group, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of Petition for Inconsequential Noncompliance.

SUMMARY: Chrysler Group, LLC, (Chrysler),[1] has determined that certain model year 2011 Chrysler Town & Country and Dodge Grand Caravan multipurpose passenger vehicles manufactured between March 16, 2011 through March 22, 2011, do not fully comply with paragraph S4.3(d) of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.* Chrysler has filed an appropriate report dated May 3, 2011, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Chrysler has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Chrysler's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Chrysler estimates that approximately 729 model year 2011 Chrysler Town & Country and Dodge Grand Caravan multipurpose passenger vehicles manufactured between March 16, 2011 and March 22, 2011 and equipped with Yokohama size 225/65–R16 passenger car tires are affected.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the 729[2] subject vehicles that Chrysler no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles.

Paragraph S4.3(d) of FMVSS No. 110 require in pertinent part:

> S4.3 Placard. Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in S4.3 (a) through (g), and may show, at the manufacturer's option, the information specified in S4.3 (h) and (i), on a placard permanently affixed to the driver's side B-pillar. In each vehicle without a driver's side B-pillar* * *
>
> (d) Tire size designation, indicated by the headings ''size'' or ''original tire size'' or ''spare,'' for the tires installed at the time of the first purchase for purposes other than resale. For full size spare tires, the statement ''see above'' may, at the manufacturer's option replace the tire size designation. If no spare tire is provided, the word ''none'' must replace the tire size designation''* * *

Chrysler explains that during the production of the subject vehicle models there was a temporary shortage of Kumho size 235/60R16 passenger car tires. As a result, Yokahama size 225/65R16 tires and vehicle placard were substituted. On March 16, 2011, when the Kumho tires were scheduled to be reintroduced, the vehicle placard was updated to reflect the tire change and placed on the subject vehicles. However, 729 vehicles that received the updated vehicle placard were fitted with the Yokahama tires instead of the Kumho tires. The noncompliance is that the vehicle placards incorrectly identified the tire size as required by paragraph S4.3(d) of FMVSS No. 110.

Chrysler notes that the tire inflation pressure requirement for both tires is the same and that the recommended gross vehicle weight rating (GVWR) of the vehicles is not affected by the tire change. Chrysler also notes that the tire circumference for both tires is the same and that the functions of the vehicle odometer, the tire pressure monitoring system (TPMS) and the electronic stability program (ESP) are not affected. In addition, Chrysler stated that the subject Kumho and Yokahama tires provide equivalent performance when mounted on the subject vehicles.

Chrysler also explains that while the non-compliant vehicle placards incorrectly state the tire size, they meet or exceed all other applicable Federal Motor Vehicle Safety Standards.

Chrysler argues that this noncompliance is inconsequential to motor vehicle safety because the noncompliant vehicle placards do not create an unsafe condition and all other labeling requirements have been met.

Chrysler also added that it believes that NHTSA has previously granted similar petitions.

In summation, Chrysler believes that the described noncompliance of its tires to meet the requirements of FMVSS No. 110 is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

Comments: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200

[1] Chrysler Group, LLC (Chrysler) is a vehicle manufacturer incorporated under the laws of the state of Delaware.

[2] Chrysler's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt Chrysler as a vehicle manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for 729 of the affected vehicles. However, a decision on this petition cannot relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Chrysler notified them that the subject noncompliance existed.

New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically:* by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/*. Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment Closing Date: March 16, 2012.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: February 9, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–3562 Filed 2–14–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Modification of Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before March 1, 2012.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC, or at *http://regulations.gov*.

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 08, 2012.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
Modification Special Permits				
13424–M special.	.....	Taminco Higher Amines, Inc. (Former Grantee: Air Products & Chemicals, Inc.), St. Gabriel, LA.	49 CFR 177.834(i)(3)	To modify the permit to authorize an additional Class 8 hazardous material.
14447–M	.....	PCS Nitrogen Ohio, L.P., Lima, OH.	49 CFR 177.834(i) and 172.302(c).	To modify the special permit to authorize the addition of two new Class 8 and one new Division 5.1 hazardous materials.
14924–M special.	.....	Explosive Service International Ltd., Baton Rouge, LA.	49 CFR §§ 176.144(e), § 176.145(b), § 176.137(b)(7), § 176.63(e), § 176.83; § 176.116(e); § 176.120; § 176.138(b); § 176.164(e); § 176.178(b).	To modify the permit to waive the requirement for a fire pump under § 176.64(e).

[FR Doc. 2012–3464 Filed 2–14–12; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration Office of Hazardous Materials Safety

Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before March 16, 2012.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov*.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 06, 2012.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
		NEW SPECIAL PERMITS		
15535–N	.....	PM HELI–OPS, CENTRAL POINT, OR.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2) and 175.30(a)(1).	To authorize the transportation in commerce of certain forbidden explosives in sling load operations in remote areas of the U.S. without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4)
15536–N	.....	WavesinSolids LLC, State College, PA.	49 CFR 173.302 and 180.209 ..	To authorize the transportation in commerce of certain cylinders which have been alternatively ultrasonically retested for use in transporting Division 2.1, 2.2 and 2.3 materials. (modes 1, 2, 3, 4, 5)
15541–N	.....	T.L. Forest Products, Inc., dba Timberland Logging, Ashland, OR.	49 CFR 49 CFR Parts 172.101, Column (9b), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1), 172.200, 172.300, and 172.400.	To authorize the transportation in commerce of certain cylinders which have been alternatively ultrasonically retested for use in transporting hazardous materials by cargo aircraft including by external load in remote areas without being subject to hazard communication requirements and quantity limitations where no other means of transportation is available. (mode 4)
15552–N	.....	POLY–COAT SYSTEMS, INC. Liverpool, TX.	49 CFR 173.240, 173.241, 173.242, 173.243 and 172.244.	To authorize the manufacture, marking, sale and use of fiberglass reinforced plastic (GFRP) as the basic material of construction for DOT–412/407 type cargo tanks. (mode 1)
15553–N	.....	Best Sanitizers, Inc., Walton, KY.	49 CFR 172.102 Special provision A6.	To authorize the transportation of non-bulk combination packages of medical grade instrument sanitizer and disinfectant materials using custom inner packagings placed within a strong outer fiberboard box (mode 4)
15555–N	.....	Schlumberger Oilfield UK Plc Dyce, Aberdeen, UK.	49 CFR 173.201(c), 173.202(c), 173.203(c), 173.301(f), 173.302(a), and 173.304(a) and (d).	To authorize the transportation in commerce of a toxic flammable gas in a non-DOT specification cylinder. (modes 1, 2, 3, 4)
15556–N	.....	Winco Inc., Aurora, OR	49 CFR 49 CFR Table § 172.101, Column (9B), § 172.204(c)(3), § 173.27(b)(2) and § 175.30(a)(1) §§ 172.200 and 172.301(c) and 175.75.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4)
15558–N	.....	3M Company, St. Paul, MN.	49 CFR 173.212	To authorize the manufacture, marking, sale, and use of service motor vehicles for use in transporting a corrosive solid material in alternative packaging. (modes 1, 3)

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15560–N	.....	San Joaquin Helicopters, Delano, CA.	49 CFR 172.101 Column (9B), § 172.204(c)(3), § 173.27(b)(2), § 175.30(a)(1), §§ 172.200, 172.300, 172.400, 173.302(f)(3) and § 175.75.	To authorize the transportation in commerce of certain hazardous materials by Part 133 Rotorcraft External Load Operations, attached to or suspended from an aircraft, in remote areas of the U.S. without meeting certain hazard communication and stowage requirements. (mode 4)

[FR Doc. 2012–3262 Filed 2–14–12; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. EP 670 (Sub-No. 1)]

Notice of Rail Energy Transportation Advisory Committee Meeting

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Rail Energy Transportation Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Rail Energy Transportation Advisory Committee (RETAC), pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2).

DATES: The meeting will be held on Thursday, March 1, 2012, at 9:00 a.m., E.S.T.

ADDRESSES: The meeting will be held in the Hearing Room on the first floor of the Board's headquarters at 395 E Street SW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman (202) 245–0386. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339].

SUPPLEMENTARY INFORMATION: RETAC arose from a proceeding instituted by the Board, in *Establishment of a Rail Energy Transportation Advisory Committee,* STB Docket No. EP 670. RETAC was formed to provide advice and guidance to the Board, and to serve as a forum for discussion of emerging issues regarding the transportation by rail of energy resources, particularly, but not necessarily limited to, coal, ethanol, and other biofuels. The purpose of this meeting is to continue discussions regarding issues such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, carriers, and users of energy resources. Potential agenda items include a presentation by the Energy Information Administration on its Annual Energy Outlook 2012; a presentation by ExxonMobil Corporation on ExxonMobil's outlook for energy to 2040, with a special focus on transportation; industry segment reports by RETAC members; discussion regarding RETAC's subcommittee structure; and a roundtable discussion.

The meeting, which is open to the public, will be conducted pursuant to RETAC's charter and Board procedures. Further communications about this meeting may be announced through the Board's Web site at *''WWW.STB.DOT.GOV''.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 721, 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: February 10, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–3541 Filed 2–14–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974, as Amended; Systems of Records

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of the consolidation of two systems of records and alterations to a third system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Financial Management Service gives notice of its proposed consolidation of two of its Privacy Act systems of records entitled ''Treasury/FMS .002—Payment Issue Records for Regular Recurring Benefit Payments'' and ''Treasury/FMS .016—Payment Records for Other Than Regular Recurring Benefit Payments,'' and alteration of resulting Treasury/FMS .002. Financial Management Service also gives notice of its proposed alteration to the system of records entitled ''Treasury/FMS .014—Debt Collection Operations System.''

DATES: Comments must be received no later than March 16, 2012. The proposed consolidation and amendments will become effective March 21, 2012, unless comments are received that would result in a contrary determination.

ADDRESSES: You should send your comments to Peter Genova, Deputy Chief Information Officer, Financial Management Service, 401 14th Street SW., Washington, DC 20227. Comments received will be available for inspection at the same address between the hours of 9 a.m. and 4 p.m. Monday through Friday. You may send your comments by electronic mail to *peter.genova@fms.treas.gov* or *www.regulations.gov.* All comments received, including attachments and other supporting materials, are subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Peter Genova, Deputy Chief Information Officer, (202) 874–1736.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, notice is given that the Financial Management Service (FMS), a bureau of the Department of the Treasury (Treasury), proposes to consolidate two of its systems of records entitled ''Treasury/FMS .002—Payment Issue Records for Regular Recurring Benefit Payments'' and ''Treasury/FMS .016—Payment Records for Other Than Regular Recurring Benefit Payments.'' The records maintained in Treasury/FMS .002 will be consolidated with the records described in the Treasury/FMS .016 and will include technical changes to harmonize the consolidation of the two systems, including alterations to two routine uses, and a proposed new routine use.

The records in both systems are records of payments from the United States Government, which are collected, maintained, and used for the same purposes. As a result, it is unnecessary to maintain two separate systems of records for the same types of records. Simultaneously with this consolidation, FMS proposes to rename and amend the system of records notice as ''Treasury/

FMS .002—Payment Records.'' The system of records notice pertaining to Treasury/FMS .016—Payment Records for Other Than Regular Recurring Benefit Payments will be deleted from the FMS inventory of Privacy Act systems of records when this notice is effective.

FMS also proposes to amend its system of records notice entitled ''Treasury/FMS .014—Debt Collection Operations System'' by adding a new routine use to the notice and amending several routine uses to make clear that FMS discloses these records to Federal and state agencies responsible for administering Federally-funded programs for the purpose of identifying, preventing, and recouping improper payments. As the agency responsible for disbursing approximately 85% of the Federal Government's payments, FMS is responsible for ensuring that it disburses payments in an accurate and timely manner. Additionally, as the agency responsible for the centralized collection of delinquent debts owed to Federal and state agencies, FMS is responsible for maximizing agencies' ability to collect debts while minimizing costs associated with these efforts. By identifying, preventing, and recouping improper payments earlier in the processes used to grant loans, benefits, and other Federally-funded awards, agencies can reduce the amount of delinquent debt owed to Government agencies.

In recent years, the Federal Government has intensified its efforts to eliminate improper payments, which can occur when funds go to the wrong recipient, the recipient receives the incorrect amount of funds, documentation is not available to support a payment, or the recipient uses funds in an improper manner. Among other things, in November 2009, Executive Order 13520 (Reducing Improper Payments) established a comprehensive approach to improving results in this area, including improved transparency through a new Web site, *www.paymentaccuracy.gov,* and the appointment of senior accountable officials at agencies with high incidences of payment errors. In 2010, the provisions of the Improper Payments Elimination and Recovery Act (IPERA), codified at 31 U.S.C. 3321 note, imposed additional requirements on agencies to eliminate improper payments. Also in 2010, Federal agencies were directed to review the so-called ''Do Not Pay List,'' to verify the eligibility of a program applicant or participant pre-award, and before payment, for the purpose of reducing the occurrence of improper payments. See, Presidential Memorandum—Enhancing Payment Accuracy Through a ''Do Not Pay List,'' June 18, 2010 (Presidential Memorandum). In those cases where data ''available to agencies clearly shows that a potential recipient of a Federal payment is ineligible for it,'' the Presidential Memorandum provides that payments should not be made. The Presidential Memorandum specified that data to be reviewed includes debt collection records, to the extent allowed by law.

Treasury is working with Federal and state agencies to reduce the government-wide number of errors without negatively impacting citizen access to needed programs. FMS's payment and debt collection records can help an agency identify when a potential recipient of a Federal payment is ineligible for it. For example, by disclosing payment records to agencies making eligibility determinations for benefits or in the process of awarding contracts, FMS can help agencies determine whether an applicant or potential contractor is receiving other payments from the Government that could impact eligibility. For example, an individual receiving a Federal salary payment may not be eligible for unemployment benefits.

FMS's payment and debt collection records can also help an agency identify when an applicant for a Federally-funded loan, benefit, contract, grant, or other award owes a delinquent debt and is therefore ineligible for the loan, benefit, contract, grant, or award. By disclosing, in advance, to agencies that an applicant owes a debt, the improper payment can be avoided. Even in situations where a benefit or other award will not be denied because of a delinquent debt, by accessing information from FMS's records, the paying agency can assist in debt collection efforts by informing the debtor, with whom the agency is in current contact, about his or her debt and the obligation to repay the government. The paying agency can also ensure that any payments to a delinquent debtor are made so that an eligible payment will be intercepted to collect the payee's delinquent obligation.

Disclosure of payment and debt collection records for the purpose of preventing, reducing, and recouping the Federal Government's improper payments, and thus, prevention of an increase in the Government's delinquent debt portfolio, is compatible with the purposes for which the payment and debt collection records are collected and maintained. There is a legitimate need for eliminating or reducing improper payments, which totaled $115 billion in fiscal year 2011, consistent with IPERA and the requirements of the Presidential Memorandum. FMS's purpose in maintaining its payment records is to ensure that payments are made accurately and timely, and its purpose in maintaining its debt collection records is to collect and resolve delinquent debt. Preventing or minimizing the occurrence of future delinquencies is compatible with and furthers the purposes for which FMS maintains its records. Thus, disclosure of these records to Federal and state agencies responsible for administering Federally funded programs without incurring improper payments is compatible with FMS's purposes because there is a requisite convergence between FMS's purposes in maintaining its records and the disclosure to prevent, identify, and recoup improper payments.

The proposed amendments to Treasury/FMS.002 and Treasury/FMS.014 are necessary to ensure the accuracy and timeliness of Federal payments; prevent, identify, and recoup improper payments; collect and resolve delinquent debt; prevent the improper award of loans, benefits, contracts, grants, or other awards to ineligible delinquent debtors; and, to avoid increasing the Government's delinquent nontax debt portfolio, which totaled $162.6 billion at the end of fiscal year 2011.

Treasury/FMS .002—Payment Records

As a result of the consolidation of Treasury/FMS .002 and FMS .016, the system of records notice is being amended to reflect the change to the title of the notice to ''Payment Records—Treasury/Financial Management Service'' to more accurately reflect the nature of the records.

The ''System location,'' is being amended to remove the words ''and Hyattsville, MD 20782. Records maintained at Financial Centers in five regions: Austin, TX; Birmingham, AL; Kansas City, MO; Philadelphia, PA; and San Francisco, CA'' from the list of locations. Other operational sites are being added to include: ''Records are also located throughout the United States at FMS operations centers, Federal Records Centers, Federal Reserve Banks acting as Treasury's fiscal agents, and financial institutions acting as Treasury's financial agents.''

Under the ''Categories of individuals covered by the system'' the list of beneficiaries has been removed and the following is added: ''Individuals who are the intended or actual recipients of

payments disbursed by the United States Government.''

The ''Categories of records in the system'' is being changed to read: ''Payment records showing a payee's name; Social Security number, employer identification number, or other agency identification or account number; physical and/or electronic mailing address; telephone numbers; payment amount; date of issuance; trace number or other payment identification number, such as Treasury check number and symbol; financial institution information, including the routing number of his or her financial institution and the payee's account number at the financial institution; and vendor contract and/or purchase order number.''

Additional authorities for Maintenance of the System are being added which include ''31 U.S.C. 3325, and 31 U.S.C. 3321 note.''

The ''Purpose(s)'' element is being added to Treasury/FMS .002 to read: ''The purpose of this system is to maintain records about individuals who receive payments from the United States Government, through one or more of its departments and agencies. The information contained in the records is maintained for the purposes of: (1) Facilitating the accurate and timely disbursement of Federal monies to individuals by check or electronically, authorized under various programs of the Federal Government; (2) administering and processing claims of payment nonreceipt, payment reclamation actions, returned payments, and other post-disbursement operations; and, (3) identifying, preventing, or recouping improper payments.''

Currently, Treasury/FMS .002 and Treasury/FMS .016 list sixteen routine uses in each of the notices. Following the consolidation of the two systems of records, routine use (5) will need to be harmonized and routine use (12) will need additional language to accurately describe the use of the records.

Under ''Routine uses of records maintained in the system, including categories of users and purposes of such uses'' the current routine use (5) will be removed and in its place the following language will be added: ''(5) Disclose information to a court, magistrate, mediator, or administrative tribunal in the course of presenting evidence; to counsel, experts, or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.'' Routine use (12) will have the following language added at the end of the routine use: ''or pursuant to Federal law that authorizes the offset of Federal payments to collect delinquent obligations owed to the State, Commonwealth, Territory, or the District of Columbia.''

To facilitate agencies' compliance with the requirements of IPERA and other Administration directives related to identifying, preventing, and recouping improper payments, the Department is adding a new routine use to permit disclosure of records, including through a matching activity, that will read as follows: ''Disclose information to (a) a Federal or state agency, its employees, agents (including contractors of its agents) or contractors; or, (b) a fiscal or financial agent designated by the Financial Management Service or other Department of the Treasury bureau or office, including employees, agents or contractors of such agent; or, (c) a contractor of the Financial Management Service, for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a state in a state-administered, Federally funded program; disclosure may be made to conduct computerized comparisons for this purpose.''

Under ''Retrievability,'' the current entry is removed and is replaced with the following: ''Records are retrieved by name, Social Security number, employer identification number, agency-supplied identifier, date of payment, or trace number or other payment identifying information, such as check number.''

Under the heading ''Safeguards,'' the language is revised to read: ''All official access to the records is on a need-to-know basis only, as authorized by a business line manager at FMS or Treasury's fiscal or financial agent. Procedural and physical safeguards, such as personal accountability, audit logs, and specialized communications security, are utilized. Each user of computer systems containing records has individual passwords (as opposed to group passwords) or other unique, secure access authentication credentials for which he or she is responsible. Thus, a security manager can identify access to the records by user. Access to computerized records is limited, through use of access codes, encryption techniques, and/or other internal mechanisms, to those whose official duties require access. Storage facilities are secured by various means such as security guards, badge access, and locked doors with key entry.''

Finally, FMS .002 is being amended by revising the language under ''Records source categories'' to read as follows: ''Information in this system is provided by Federal departments and agencies responsible for certifying, disbursing, and collecting Federal payments; Treasury or Treasury-designated fiscal and financial agents of the United States that process payments and collections; and commercial database vendors. Each of these record sources may include information obtained from individuals.''

Treasury/FMS .014—Debt Collection Operations System

The Privacy Act notice pertaining to this system of records is being revised under ''System location'' by removing the current entry and in its place adding the following language: ''Records are also located throughout the United States at FMS operations centers, Federal Records Centers, Federal Reserve Banks acting as Treasury's fiscal agents, and financial institutions acting as Treasury's financial agents. Additional addresses may be obtained from the system managers.''

Additional authority for Maintenance of the System is being added which includes

''31 U.S.C. 3321 note.''

Under the heading ''Purpose(s),'' language is being added at the end of the paragraph to indicate that the purpose of maintaining the records includes ''resolving delinquent debts owed by debtors who are ineligible for Federally funded programs until the delinquency is resolved, and for identifying, preventing, or recouping improper payments to individuals who owe delinquent obligations to Federal and/or state agencies.'' This makes clearer that part of FMS's debt collection responsibilities includes helping Federal and state agencies prevent increases in delinquent debts and use all available mechanisms to collect existing debts.

Currently, Treasury/FMS .014 lists nine routine uses in the notice. Under ''Routine uses of records maintained in the system, including categories of users and purposes of such uses,'' the current routine use (2) will be removed and in its place the following language will be added: ''(2) Disclose information to a court, magistrate, mediator, or administrative tribunal in the course of presenting evidence; to counsel, experts, or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.'' The current routine use (8) will be revised by adding to (8)a.(iii) ''or locate debtors'' before the semi-colon.

To facilitate agencies' compliance with the requirements of IPERA and

other Administration directives related to identifying, preventing, and recouping improper payments, the Department is adding a new routine use to permit disclosure of records, including through a matching activity, that will reads as follows: ''These records may be used to disclose information to: (a) a Federal or state agency, its employees, agents (including contractors of its agents) or contractors; or, (b) a fiscal or financial agent designated by the Financial Management Service or other Department of the Treasury bureau or office, including employees, agents or contractors of such agent; or, (c) a contractor of the Financial Management Service, for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a state in a state-administered, Federally-funded program; disclosure may be made to conduct computerized comparisons for this purpose.''

Description of the change: Remove current routine use (2) and in its place add the following: ''(2) A court, magistrate, mediator, or administrative tribunal in the course of presenting evidence; counsel, experts, or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;'' and in current routine use (8), add to (8)a.(iii) ''or locate debtors'' before the semi-colon.

FMS is also adding a new routine use to this system of records to reflect disclosures that may be made to identify, prevent, or recoup improper payments to individuals who owe delinquent debts to Federal and state agencies and disclosures may be made by a computerized comparison. The new routine use reads as follows: ''These records may be used to disclose information to: * * * (a) a Federal or state agency, its employees, agents (including contractors of its agents) or contractors; or, (b) a fiscal or financial agent designated by the Financial Management Service or other Department of the Treasury bureau or office, including employees, agents or contractors of such agent; or, (c) a contractor of the Financial Management Service, for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a state in a state-administered, Federally funded program; disclosure may be made to conduct computerized comparisons for this purpose.''

Under ''Record Source Categories,'' the current entry is being amended to read: ''Information in this system is provided by the individual on whom the record is maintained; Federal and State agencies to which the debt is owed; Federal agencies and other entities that employ the individual or have information concerning the individual's employment or financial resources; Federal and State agencies issuing payments; collection agencies; locator and asset search companies, credit bureaus, and other database vendors; Federal, State or local agencies furnishing identifying information and/or debtor address information; and/or public documents.''

FMS recognizes the sensitive nature of the information it may be disclosing to other Federal and state agencies and has many safeguards in place to protect the information from theft or inadvertent disclosure. In addition to various procedural and physical safeguards, access to computerized records is limited through the use of access codes, encryption techniques and/or other internal mechanisms. Access to records is granted only as authorized by a business line manager at FMS and is limited to those whose official duties require access solely for the purposes outlined in the proposed system.

The notice for FMS's systems of records was last published in its entirety on May 15, 2009, at 74 FR 23007 for Treasury/FMS .002 and at 74 FR 23018 for Treasury/FMS .016. The notice for Treasury/FMS .014 was last published in its entirety on June 4, 2009 at 74 FR 26924.

The altered system of records report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

For the reasons set forth in the preamble, FMS proposes to consolidate its system of records entitled ''Treasury/FMS .002—Payment Issue Records for Regular Recurring Benefit Payments'' and ''Treasury/FMS .016—Payment Records for Other Than Regular Recurring Benefit Payments.'' FMS also proposes to rename and amend its consolidated Treasury/FMS .002 system of records notice and amend its system of records notice entitled ''Treasury/FMS .014—Debt Collection Operations System,'' as follows:

The consolidated and amended notices entitled ''Treasury/FMS .002—Payment Records'' and ''Treasury/FMS .014—Debt Collection Operations'' are reprinted in their entirety below.

Dated: January 26, 2012.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

TREASURY/FMS .002

SYSTEM NAME:

Payment Records—Treasury/Financial Management Service.

SYSTEM LOCATION:

The Financial Management Service, U.S. Department of the Treasury, Washington, DC 20227. Records are also located throughout the United States at FMS operations centers, Federal Records Centers, Federal Reserve Banks acting as Treasury's fiscal agents, and financial institutions acting as Treasury's financial agents. Additional addresses may be obtained from the system managers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the intended or actual recipients of payments disbursed by the United States Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payment records showing a payee's name; Social Security number, employer identification number, or other agency identification or account number; physical and/or electronic mailing address; telephone numbers; payment amount; date of issuance; trace number or other payment identification number, such as Treasury check number and symbol; financial institution information, including the routing number of his or her financial institution and the payee's account number at the financial institution; and vendor contract and/or purchase order number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 3325, and 31 U.S.C. 3321 note; Executive Order 6166, dated June 10, 1933.

PURPOSE:

The purpose of this system is to maintain records about individuals who receive payments from the United States Government, through one or more of its departments and agencies. The information contained in the records is maintained for the purposes of: (1) Facilitating the accurate and timely disbursement of Federal monies to

individuals by check or electronically, authorized under various programs of the Federal Government; (2) administering and processing claims of payment nonreceipt, payment reclamation actions, returned payments, and other post-disbursement operations; and, (3) identifying, preventing, or recouping improper payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose to banking industry for payment verification;

(2) Disclose to Federal investigative agencies, Departments and agencies for whom payments are made, and payees;

(3) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(4) Disclose information to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(5) Disclose information to a court, magistrate, mediator, or administrative tribunal in the course of presenting evidence; to counsel, experts, or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(6) Disclose information to foreign governments in accordance with formal or informal international agreements;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(9) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(10) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(11) Disclose information concerning delinquent debtors to Federal creditor agencies, their employees, or their agents for the purpose of facilitating or conducting Federal administrative offset, Federal tax refund offset, Federal salary offset, or for any other authorized debt collection purpose;

(12) Disclose information to any State, Territory or Commonwealth of the United States, or the District of Columbia to assist in the collection of State, Commonwealth, Territory or District of Columbia claims pursuant to a reciprocal agreement between FMS and the State, Commonwealth, Territory or the District of Columbia, or pursuant to Federal law that authorizes the offset of Federal payments to collect delinquent obligations owed to the State, Commonwealth, Territory, or the District of Columbia;

(13) Disclose to the Defense Manpower Data Center and the United States Postal Service and other Federal agencies through authorized computer matching programs for the purpose of identifying and locating individuals who are delinquent in their repayment of debts owed to the Department or other Federal agencies in order to collect those debts through salary offset and administrative offset, or by the use of other debt collection tools;

(14) Disclose information to a contractor of the Financial Management Service for the purpose of performing routine payment processing services, subject to the same limitations applicable to FMS officers and employees under the Privacy Act;

(15) Disclose information to a fiscal or financial agent of the Financial Management Service, its employees, agents, and contractors, or to a contractor of the Financial Management Service, for the purpose of ensuring the efficient administration of payment processing services, subject to the same or equivalent limitations applicable to FMS officers and employees under the Privacy Act;

(16) Disclose information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm; and

(17) Disclose information to (a) a Federal or state agency, its employees, agents (including contractors of its agents) or contractors; or, (b) a fiscal or financial agent designated by the Financial Management Service or other Department of the Treasury bureau or office, including employees, agents or contractors of such agent; or, (c) a contractor of the Financial Management Service, for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a state in a state-administered, Federally funded program; disclosure may be made to conduct computerized comparisons for this purpose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hardcopy/Electronic.

RETRIEVABILITY:

Records are retrieved by name, social security number, employer identification number, agency-supplied identifier, date of payment, or trace number or other payment identifying information, such as check number.

SAFEGUARDS:

All official access to the records is on a need-to-know basis only, as authorized by a business line manager at FMS, or a fiscal or financial agent of the United States, consistent with agent authority granted by Treasury or FMS. Procedural and physical safeguards, such as personal accountability, audit logs, and specialized communications security, are utilized. Each user of computer systems containing records has individual passwords (as opposed to group passwords) or other unique, secure access authentication credentials for which he or she is responsible. Thus, a security manager can identify access to the records by user. Access to computerized records is limited, through use of access codes, encryption techniques, and/or other internal mechanisms, to those whose official duties require access. Storage facilities are secured by various means such as security guards, badge access, and locked doors with key entry.

RETENTION AND DISPOSAL:

FMS has submitted a records schedule to the National Archives and Records Administration (NARA) with a proposed retention period of seven years. Until NARA approves the proposed records schedule, disposal is not authorized.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Disbursing Officer, Financial Management Service, 401 14th Street SW., Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th Street SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether the Financial Management Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer at the address shown above. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR, part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is provided by Federal departments and agencies responsible for certifying, disbursing, and collecting Federal payments; Treasury or FMS-designated fiscal and financial agents of the United States that process payments and collections; and commercial database vendors. Each of these record sources may include information obtained from individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

* * * * *

TREASURY/FMS.014

SYSTEM NAME:

Debt Collection Operations System—Treasury/Financial Management Service.

SYSTEM LOCATION:

Records are also located throughout the United States at FMS operations centers, Federal Records Centers, Federal Reserve Banks acting as Treasury's fiscal agents, and financial institutions acting as Treasury's financial agents. Additional addresses may be obtained from the system managers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who owe debts to: (a) The United States, through one or more of its departments and agencies; and/or (b) States, territories and commonwealths of the United States, and the District of Columbia (hereinafter collectively referred to as ''States'').

CATEGORIES OF RECORDS IN THE SYSTEM:

Debt records containing information about the debtor(s), the type of debt, the governmental entity to which the debt is owed, and the debt collection tools utilized to collect the debt. The records may contain identifying information, such as name(s) and taxpayer identifying number (*i.e.,* Social Security number or employer identification number); debtor contact information, such as work and home address, and work and home telephone numbers; information concerning the financial status of the debtor and his/her household, including income, assets, liabilities or other financial burdens, and any other resources from which the debt may be recovered; and name of employer and employer address. Debts include unpaid taxes, loans, assessments, fines, fees, penalties, overpayments, advances, extensions of credit from sales of goods or services, and other amounts of money or property owed to, or collected by, the Federal Government or a State, including past due support which is being enforced by a State. The records also may contain information about: (a) The debt, such as the original amount of the debt, the debt account number, the date the debt originated, the amount of the delinquency or default, the date of delinquency or default, basis for the debt, amounts accrued for interest, penalties, and administrative costs, and payments on the account; (b) Actions taken to collect or resolve the debt, such as copies of demand letters or invoices, documents or information required for the referral of accounts to collection agencies or for litigation, and collectors' notes regarding telephone or other communications related to the collection or resolution of the debt; and (c) The referring or governmental agency that is collecting or owed the debt, such as name, telephone number, and address of the agency contact.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966 (Pub. L. 89–508), as amended by the Debt Collection Act of 1982 (Pub. L. 97–365, as amended); Deficit Reduction Act of 1984 (Pub. L. 98–369, as amended); Debt Collection Improvement Act of 1996 (Pub. L. 104–134, sec. 31001); Taxpayer Relief Act of 1997 (Pub. L. 105–34); Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206); 26 U.S.C. 6402; 26 U.S.C. 6331; 31 U.S.C. Chapter 37 (Claims), Subchapter I (General) and Subchapter II (Claims of the U.S. Government); 31 U.S.C. 3321 note.

PURPOSE(S):

The purpose of this system is to maintain records about individuals who owe debt(s) to the United States, through one or more of its departments and agencies, and/or to States, including past due support enforced by States. The information contained in the records is maintained for the purpose of taking action to facilitate the collection and resolution of the debt(s) using various collection methods, including, but not limited to, requesting repayment of the debt by telephone or in writing, offset, levy, administrative wage garnishment, referral to collection agencies or for litigation, and other collection or resolution methods authorized or required by law. The information also is maintained for the purpose of providing collection information about the debt to the agency collecting the debt, to provide statistical information on debt collection operations, and for the purpose of testing and developing enhancements to the computer systems which contain the records. The information also is maintained for the purpose of resolving delinquent debts owed by debtors who are ineligible for Federally funded programs until the delinquency is resolved, and for identifying, preventing, or recouping improper payments to individuals who owe delinquent obligations to Federal and/or state agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, State, local or foreign agencies responsible for investigating or implementing, a statute, rule, regulation, order, or license;

(2) A court, magistrate, mediator, or administrative tribunal in the course of

presenting evidence; counsel, experts, or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(3) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Any Federal agency, State or local agency, U.S. territory or commonwealth, or the District of Columbia, or their agents or contractors, including private collection agencies (consumer and commercial):

a. To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to;

(i) Request for repayment by telephone or in writing;

(ii) Negotiation of voluntary repayment or compromise agreements;

(iii) Offset of Federal payments, which may include the disclosure of information contained in the records for the purpose of providing the debtor with appropriate pre-offset notice and to otherwise comply with offset prerequisites, to facilitate voluntary repayment in lieu of offset, and to otherwise effectuate the offset process;

(iv) Referral of debts to private collection agencies, to Treasury-designated debt collection centers, or for litigation;

(v) Administrative and court-ordered wage garnishment;

(vi) Debt sales;

(vii) Publication of names and identities of delinquent debtors in the media or other appropriate places; and

(viii) Any other debt collection method authorized by law;

b. To conduct computerized comparisons to locate Federal payments to be made to debtors;

c. To conduct computerized comparisons to locate employers of, or obtain taxpayer identifying numbers or other information about, an individual for debt collection purposes;

d. To collect a debt owed to the United States through the offset of payments made by States, territories, commonwealths, or the District of Columbia;

e. To account or report on the status of debts for which such entity has a financial or other legitimate need for the information in the performance of official duties;

f. For the purpose of denying Federal financial assistance in the form of a loan or loan guaranty to an individual who owes delinquent debt to the United States or who owes delinquent child support that has been referred to FMS for collection by administrative offset;

g. To develop, enhance and/or test database, matching, communications, or other computerized systems which facilitate debt collection processes; or

h. For any other appropriate debt collection purpose.

(5) The Department of Defense, the U.S. Postal Service, or other Federal agency for the purpose of conducting an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to identify and locate individuals receiving Federal payments including, but not limited to, salaries, wages, and benefits, which may include the disclosure of information contained in the records for the purpose of requesting voluntary repayment or implementing Federal employee salary offset or other offset procedures;

(6) The Department of Justice or other Federal agency:

a. when requested in connection with a legal proceeding, or

b. to obtain concurrence in a decision to compromise, suspend, or terminate collection action on a debt;

(7) Any individual or other entity who receives Federal payments as a joint payee with a debtor for the purpose of providing notice of, and information about, offsets from such Federal payments; and

(8) Any individual or entity:

a. To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to:

(i) Administrative and court-ordered wage garnishment;

(ii) Report information to commercial credit bureaus;

(iii) Conduct asset searches or locate debtors;

(iv) Publish names and identities of delinquent debtors in the media or other appropriate places; or

(v) Debt sales;

b. For the purpose of denying Federal financial assistance in the form of a loan or loan guaranty to an individual who owes delinquent debt to the United States or who owes delinquent child support that has been referred to FMS for collection by administrative offset; or

c. For any other appropriate debt collection purpose. Disclosure to consumer reporting agencies including for the provision of routine debt collection services by an FMS contractor subject to the same limitations applicable to FMS officers and employees under the Privacy Act; and

(9) Appropriate agencies, entities, and persons when (A) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (B) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (C) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(10) (a) a Federal or state agency, its employees, agents (including contractors of its agents) or contractors; or, (b) a fiscal or financial agent designated by the Financial Management Service or other Department of the Treasury bureau or office, including employees, agents or contractors of such agent; or, (c) a contractor of the Financial Management Service, for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a state in a state-administered, Federally funded program; disclosure may be made to conduct computerized comparisons for this purpose.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debt information concerning a government claim against a debtor is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e), to consumer reporting agencies, as defined by the Fair Credit Reporting Act, 5 U.S.C. 1681(f), to encourage repayment of a delinquent debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hardcopy/Electronic.

RETRIEVABILITY:

Records are retrieved by various combinations of name, taxpayer identifying number (i.e., social security number or employer identification number), or debt account number.

SAFEGUARDS:

All officials access the system of records on a need-to-know basis only, as authorized by the system manager. Procedural and physical safeguards are utilized, such as accountability, receipt records, and specialized

communications security. Access to computerized records is limited, through use of access codes, entry logs, and other internal mechanisms, to those whose official duties require access. Hard-copy records are held in steel cabinets, with access limited by visual controls and/or lock systems. During normal working hours, files are attended by responsible officials; files are locked up during non-working hours. The building is patrolled by uniformed security guards.

RETENTION AND DISPOSAL:

Retention periods vary by record type, up to a maximum of seven years after the end of the fiscal year in which a debt is resolved or returned to the agency as uncollectible.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager, Debt Management Services, Financial Management Service, 401 14th Street SW., Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974, as amended, shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th Street SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether FMS maintains the records requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974, as amended, concerning procedures for gaining access or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C, and appendix G, concerning requirements of this Department with respect to the Privacy Act of 1974, as amended.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual on whom the record is maintained; Federal and State agencies to which the debt is owed; Federal agencies and other entities that employ the individual or have information concerning the individual's employment or financial resources; Federal and State agencies issuing payments; collection agencies; locator and asset search companies, credit bureaus, and other database vendors; Federal, State or local agencies furnishing identifying information and/or debtor address information; and/or public documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–3459 Filed 2–14–12; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974, System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Proposed Alteration to a Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the United States Department of the Treasury gives notice of alterations to its Privacy Act systems of records entitled ''Treasury/DO .196—Security Information System.''

DATES: Comments should be received no later than March 16, 2012. The changes will be effective March 21, 2012 unless the Department receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Security Programs, Room 3180 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The Department will make such comments available for public inspection and copying at the Department of the Treasury Library, 1500 Pennsylvania Avenue NW., Washington DC 20020 on official business days between the hours of 9 a.m. and 5 p.m. Eastern Time. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 622–0990. All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Wade C. Straw, Director, Office of Security Programs, (202) 622–7870 or at *wade.straw@Treasury.com.*

SUPPLEMENTARY INFORMATION: The Department has reviewed this system of records and determined that it should be updated to capture changes required by Executive Order 13526, as well as other alterations to:

(1) Change the name of the system to ''Treasury Information Security Program'';

(2) Add as a category of individuals covered by the system individuals who have received security training;

(3) Increase the types of records in the system reflecting on the process to issue courier cards and official credentials;

(4) Implement pertinent aspects of the Executive Order on security classification;

(5) Revise routine use (1) and add three routine uses under which a disclosure from the system is permitted, and

(6) Update the description under ''storage'' to indicate records are also stored electronically.

The revised and new routine uses read as follows:

(1) These records may be used to disclose pertinent information to appropriate Federal agencies responsible for the protection of national security information, or reporting a security violation of, or enforcing, or implementing, a statute, rule, regulation, or order, or where the Department becomes aware of an indication of a potential violation of civil or criminal law or regulation, rule or order.

(2) These records may be used to disclose pertinent information to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(3) These records may be used to disclose pertinent information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Federal Government is a party to the judicial or administrative proceeding. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a court of competent jurisdiction.

(4) These records may be used to disclose pertinent information to the United States Department of Justice for the purpose of representing or providing legal advice to the Treasury Department (Department) in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, when such proceeding involves:

(A) The Department or any component thereof;

(B) Any employee of the Department in his or her official capacity;

(C) Any employee of the Department in his or her individual capacity where the Department of Justice or the Department has agreed to represent the employee; or

(D) The United States, when the Department determines that litigation is likely to affect the Department or any of its components.

The system of records notice was last published in its entirety on April 20, 2010, at 75 FR 20690. The proposed alterations to the system of records entitled ''Treasury/DO .196—Treasury Information Security Program'' is published in its entirety below.

Dated: January 26, 2012.

Melissa Hartman,

Deputy Assistant Secretary for Privacy and Treasury Records.

TREASURY/DO .196

SYSTEM NAME:

Treasury Information Security Program.

SYSTEM LOCATION:

Department of the Treasury, Office of Security Programs, Room 3180 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Each Department of the Treasury official, by name and position title, who has been delegated the authority to downgrade and declassify national security information and who is not otherwise authorized to originally classify.

(2) Each Department of the Treasury official, by name and position title, who has been delegated the authority for original classification of national security information, exclusive of officials specifically given this authority via Treasury Order 105–19.

(3) Department of the Treasury employees who have valid security violations as a result of the improper handling/processing, safeguarding or storage of classified information or collateral national security systems.

(4) Department of the Treasury employees (including detailees, interns and select contractors) who receive initial, specialized and/or annual refresher training on requirements for protecting classified information.

(5) Department of the Treasury employees and contractors issued a courier card authorizing them to physically transport classified information within and between Treasury, bureaus, and other U.S. Government agencies and departments.

(6) Departmental Offices officials and bureau heads issued Department of the Treasury credentials as evidence of their authority and empowerment to execute and fulfill the duties of their appointed office and those Departmental Offices officials authorized to conduct official investigations and/or inquiries on behalf of the U.S. Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Report of Authorized Downgrading and Declassification Officials, (2) Report of Authorized Classifiers, (3) Record of Security Violation, (4) Security Orientation Acknowledgment, (5) Request and Receipt for Courier Card, and (6) Request and Receipt for Official Credential.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 13526, dated December 29, 2009 and the Treasury Security Manual, TD P 15–71, last updated October 28, 2011.

PURPOSE(S):

The system is designed to (1) Oversee compliance with Executive Order 13526, Information Security Oversight Office Directives, the Treasury Security Manual, and Departmental security programs, (2) ensure proper classification of national security information, (3) record details of valid security violations, (4) assist in determining the effectiveness of information security programs affecting classified and sensitive information, and (5) safeguard classified information throughout its entire life-cycle.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records may be used to disclose pertinent information to:

(1) Appropriate Federal agencies responsible for the protection of national security information, or reporting a security violation of, or enforcing, or implementing, a statute, rule, regulation, or order, or where the Department becomes aware of an indication of a potential violation of civil or criminal law or regulation, rule or order;

(2) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(3) Another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Federal Government is a party to the judicial or administrative proceeding. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a court of competent jurisdiction;

(4) The United States Department of Justice for the purpose of representing or providing legal advice to the Treasury Department (Department) in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, when such proceeding involves:

(A) The Department or any component thereof;

(B) Any employee of the Department in his or her official capacity;

(C) Any employee of the Department in his or her individual capacity where the Department of Justice or the Department has agreed to represent the employee; or

(D) The United States, when the Department determines that litigation is likely to affect the Department or any of its components, and

(5) Appropriate agencies, entities, and persons when: (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise that there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media and hard copy files.

RETRIEVABILITY:

Records may be retrieved by the name of the official or employee, contractor, detailee or intern, bureau head and/or chief deputy.

SAFEGUARDS:

Secured in security containers and/or controlled space to which access is limited to Office of Security Programs security officials with the need to know.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule 18, with the exception of the Record of Security Violation (retained for a period of two years) and the Security Orientation Acknowledgment, the Request and Receipt for Courier Card, and the Request and Receipt for Official Credential, the remaining

records are destroyed and/or updated on an annual basis. Destruction is effected by on-site shredding or other comparable means.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, (Information Security), Office of Security Programs, Room 3180 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to records maintained in this system, or seek to contest its content, must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (See 31 CFR Part 1, Appendix A). Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

RECORDS ACCESS PROCEDURES:

See ''notification procedure'' above.

CONTESTING RECORDS PROCEDURES:

See ''notification procedure'' above.

RECORD SOURCE CATEGORIES:

The sources of the information are employees of the Department of the Treasury. The information concerning any security violation is reported by Department of the Treasury security officials and by Department of State security officials as concerns Treasury or bureau personnel assigned to overseas U.S. diplomatic posts or missions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–3457 Filed 2–14–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Integrity Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 9 to the Treasury Department Circular 570, 2011 Revision, published July 1, 2011, at 76 FR 38892.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company:

Integrity Mutual Insurance Company (NAIC # 14303). Business Address: P.O. Box 539, Appleton, WI 54912–0539. Phone: (920) 734–4511. Underwriting Limitation b/: $3,374,000. Surety Licenses c/: IL, IA, MN, WI. Incorporated In: Wisconsin.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2011 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (see 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: January 31, 2012.

Laura Carrico,

Director, Financial Accounting and Services Division.

[FR Doc. 2012–3473 Filed 2–14–12; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Grange Mutual Casualty Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 7 to the Treasury Department Circular 570, 2011 Revision, published July 1, 2011, at 76 FR 38892.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company:

Grange Mutual Casualty Company (NAIC # 14060). Business Address: 671 South High Street, Columbus, OH. 43206–1014. Phone: (614) 445–2900. Underwriting Limitation b/: 78,850,000. Surety Licenses Cl: AL, GA, IL, IN, IA, KS, KY, MO, OH, PA, SC, TN, VA, WI. Incorporated In: Ohio.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2011 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (see 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: January 31, 2012.

Laura Carrico,

Director, Financial Accounting and Services Division.

[FR Doc. 2012–3474 Filed 2–14–12; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Grange Insurance Company of Michigan

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 8 to the Treasury Department Circular 570, 2011 Revision, published July 1, 2011, at 76 FR 38892.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company:

Grange Insurance Company of Michigan (NAIC# 11136). Business Address: 671 South High Street, P.O. Box 1218, Columbus, OH 43216–1218. Phone: (614) 445–2900. Underwriting Limitation b/: $2,826,000. Surety Licenses Cl: MI, OH, Incorporated In: Ohio.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2011 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (see 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: January 31, 2012.

Laura Carrico,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 2012–3475 Filed 2–14–12; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

OFAC Implementation of Certain Sanctions Imposed on Three Persons by the Secretary of State Pursuant to the Iran Sanctions Act of 1996, as Amended

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is taking action to implement certain of the sanctions imposed on three persons by the Secretary of State pursuant to the Iran Sanctions Act of 1996 (Pub. L. 104–172) (50 U.S.C. 1701 note) (''ISA''), as amended by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195) (22 U.S.C. 8501–8551) (''CISADA'').

DATES: OFAC's action to implement the sanctions on FAL OIL COMPANY LTD, KUO OIL (S) PTE. LIMITED, and ZHUHAI ZHENRONG COMPANY was taken on January 12, 2012. The effective date for these actions is February 15, 2012 or the date of actual notice, whichever is earlier.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Sanctions Compliance and Evaluation Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treasury.gov/offices/enforcement/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24 hour fax-on-demand service, tel.: (202) 622–0077.

Background

ISA, as amended by CISADA, requires the Secretary of State, pursuant to authority delegated by the President, to impose or waive sanctions on persons determined to have made certain investments in Iran's energy sector or to have engaged in certain activities relating to Iran's refined petroleum sector. Executive Order 13574 of May 23, 2011, ''Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Sanctions Act of 1996, as Amended,'' requires the Secretary of the Treasury, pursuant to authority under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), to implement certain of the sanctions imposed by the Secretary of State under ISA, as amended by CISADA.

The five ISA sanctions that the Secretary of the Treasury is responsible for implementing are: (i) With respect to section 6(a)(3) of ISA, to prohibit any United States financial institution from making loans or providing credits to a person sanctioned under ISA consistent with section 6(a)(3) of ISA; (ii) with respect to section 6(a)(6) of ISA, to prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which a person sanctioned under ISA has any interest; (iii) with respect to section 6(a)(7) of ISA, to prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of a person sanctioned under ISA; (iv) with respect to section 6(a)(8) of ISA, to block all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any overseas branch, of a person sanctioned under ISA, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in; and (v) with respect to section 6(a)(9) of ISA, to restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from a person sanctioned under ISA.

The Secretary of State recently imposed ISA sanctions on three persons. *See* 77 FR 4389 (Jan. 27, 2012), which provides the names of the three persons subject to sanctions, as well as a complete list of the sanctions imposed on each person. Pursuant to Executive Order 13574, the Secretary of the Treasury is responsible for implementing certain of the sanctions imposed by the Secretary of State. Accordingly, the Director of OFAC, acting pursuant to delegated authority, has taken the actions described below to implement those sanctions set forth in Executive Order 13574 with respect to the three persons listed below.

1. FAL OIL COMPANY LTD., Sultan Al Awal Street (Sheikh Sultan Bin Awal Road), Near Mina Sea Port, Near Mina Khalid Road, Al Khan Area, Sharjah, Sharjah, U.A.E., Telephone: 97165029999; Telephone: 97165280861; Telephone: 97165286666; Telephone: 97165283334; Telephone: 97165283323; Telephone: 97165022234; Telephone: 97165029999; Telephone: 97165029804; Telephone: 97165029914; Telephone: 97165029824; Telephone: 97165281737; Telephone: 97165029814; Telephone: 97165029825; Telephone: 97165029840; Telephone: 97165029863; Telephone: 97165029842; Telephone: 97165029819; Telephone: 97165029836; Telephone: 97168029939; Fax: 97165281437; Fax: 97165280861:

The Director of OFAC has prohibited United States financial institutions from making loans or providing credits totaling more than $10,000,000 in any 12-month period to FAL OIL COMPANY LTD. unless it is engaged in activities to relieve human suffering and the loans or credits are provided for such activities.

2. KUO OIL (S) PTE. LIMITED, 200 Cantonment Road, #15–00, Southpoint, Singapore, 089763, Singapore, Telephone: 6563184677; Fax: 6562243040:

The Director of OFAC has prohibited United States financial institutions from making loans or providing credits totaling more than $10,000,000 in any 12-month period to KUO OIL (S) PTE. LIMITED unless it is engaged in activities to relieve human suffering and the loans or credits are provided for such activities.

3. ZHUHAI ZHENRONG COMPANY, Zhenrong Building, 121 DaTunli, Chaoyang District, Beijing, 100108, China, Telephone: 861052925900; Fax: 861052025900:

The Director of OFAC has prohibited United States financial institutions from making loans or providing credits totaling more than $10,000,000 in any 12-month period to ZHUHAI ZHENRONG COMPANY unless it is engaged in activities to relieve human suffering and the loans or credits are provided for such activities.

Dated: February 7, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–3462 Filed 2–14–12; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 77 Wednesday,
No. 31 February 15, 2012

Part II

Department of Labor

Wage and Hour Division

29 CFR Part 825

The Family and Medical Leave Act; Proposed Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 825

RIN 1215–AB76, RIN 1235–AA03

The Family and Medical Leave Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor's Wage and Hour Division proposes to revise certain regulations of the Family and Medical Leave Act of 1993 (FMLA or the Act), primarily to implement recent statutory amendments to the Act. This Notice of Proposed Rulemaking (NPRM) proposes regulations to implement amendments to the military leave provisions of the FMLA made by the National Defense Authorization Act for Fiscal Year 2010, which extends the availability of FMLA leave to family members of members of the Regular Armed Forces for qualifying exigencies arising out of the servicemember's deployment; defines those deployments covered under these provisions; and extends FMLA military caregiver leave to family members of certain veterans with serious injuries or illnesses. This NPRM also proposes to amend the regulations to implement the Airline Flight Crew Technical Corrections Act, which established new FMLA leave eligibility requirements for airline flight crewmembers and flight attendants. In addition, the proposal includes changes concerning the calculation of leave; reorganization of certain sections to enhance clarity; the removal of the forms from the regulations; and technical corrections of inadvertent drafting errors in the current regulations.

DATES: Comments must be received on or before April 16, 2012.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA03, by electronic submission through the Federal eRulemaking Portal *http://www.regulations.gov*. Follow instructions for submitting comments. You may also submit comments by mail. Address written submissions to Mary Ziegler, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: Please submit only one copy of your comments by only one method. All submissions must include the agency name and RIN, identified above, for this rulemaking. Please be advised that comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided, and should not include any individual's personal medical information. For questions concerning the application of the FMLA provisions, individuals may contact the Wage and Hour Division (WHD) local district offices (see contact information below). Mailed written submissions commenting on these provisions must be received by the date indicated for consideration in this rulemaking. For additional information on submitting comments and the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this rule may be obtained in alternative formats (large print, Braille, audio tape or disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency's regulations may be directed to the nearest WHD district office. Locate the nearest office by calling the WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the WHD's Web site for a nationwide listing of WHD district and area offices at *http://www.dol.gov/whd/america2.htm*.

SUPPLEMENTARY INFORMATION:

I. Electronic Access and Filing Comments

Public Participation: This NPRM is available through the **Federal Register** and the *http://www.regulations.gov* Web site. You may also access this document via the WHD's Web site at *http://www.dol.gov/whd/*. To comment electronically on Federal rulemakings, go to the Federal e-Rulemaking Portal at *http://www.regulations.gov*, which will allow you to find, review, and submit comments on Federal documents that are open for comment and published in the **Federal Register**. You must identify all comments submitted by including the RIN 1235–AA03 in your submission. The RIN identified for this rulemaking changed with the publication of the 2010 Spring Regulatory Agenda due to an organizational restructuring. The previously identified RIN was assigned to the Employment Standards Administration, which no longer exists. A new RIN has been assigned to the WHD. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period (date identified above); comments submitted after the comment period closes will not be considered. Submit only one copy of your comments by only one method. Please be advised that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided, and should not include any individual's personal medical information.

II. Background

Subsequent to this rulemaking first appearing on the Department's Fall 2009 Regulatory Agenda, the FMLA was amended by the National Defense Authorization Act for Fiscal Year 2010 (FY 2010 NDAA), Public Law 111–84, and the Airline Flight Crew Technical Corrections Act (AFCTCA), Public Law 111–119. This rulemaking, therefore, proposes regulatory changes to implement these statutory amendments. The Department continues to review the impact of regulatory revisions published in the Family and Medical Leave Act of 1993, Final Rule on November 17, 2008 (2008 final rule). 73 FR 67934.

A. What the FMLA Provides

The Family and Medical Leave Act of 1993, 29 U.S.C. 2601 *et seq.,* was enacted on February 5, 1993, and became effective for most covered employers on August 5, 1993. As originally enacted, the FMLA entitles eligible employees of covered employers to take job-protected, unpaid leave, or to substitute appropriate accrued paid leave, for up to a total of 12 workweeks in a 12-month period for the birth of the employee's son or daughter and to care for the newborn child; for the placement of a son or daughter with the employee for adoption or foster care; to care for the employee's spouse, parent, son, or daughter with a serious health condition; or when the employee is unable to work due to the employee's own serious health condition.

The FMLA was amended in January 2008 by enactment of the National

Defense Authorization Act for FY 2008 (FY 2008 NDAA). Public Law 110–181. Section 585(a) of FY 2008 NDAA expanded the FMLA to allow eligible employees of covered employers to take FMLA leave because of any qualifying exigency (as determined by the Secretary of Labor) when that employee's spouse, son, daughter, or parent is a member of the National Guard or Reserves who is on, or has been notified of an impending call or order to, active duty in the Armed Forces in support of a contingency operation (referred to as ''qualifying exigency leave''). Additionally, the FY 2008 NDAA amendments provided up to 26 workweeks of leave in a ''single 12-month period'' for an eligible employee to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember (referred to as ''military caregiver leave''). These two leave entitlements are collectively referred to as ''military family leave''.

The FMLA was again amended in 2009 with the enactment of the FY 2010 NDAA on October 28, 2009, and the AFCTCA on December 21, 2009. Section 565(a) of the FY 2010 NDAA amended the military family leave provisions of the FMLA by extending qualifying exigency leave to eligible family members of the Regular Armed Forces, and military caregiver leave to include care provided to certain veterans. The AFCTCA amended the FMLA to include special eligibility requirements for airline flight crewmembers and flight attendants (referred to collectively as ''airline flight crew employees''). A new definition of hours of service as it applies to airline flight crew employees was included in the eligibility provisions. Each of these provisions is discussed in detail in the section-by-section analysis that follows.

FMLA leave may be taken in a block, or under certain circumstances, intermittently or on a reduced leave schedule. In addition to providing job protected family and medical leave, employers must also maintain any preexisting group health plan coverage for an employee on FMLA protected leave under the same conditions that would apply if the employee had not taken leave. 29 U.S.C. 2614. Once the leave period is concluded, the employer is required to restore the employee to the same or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. *Id.* If an employee believes that his or her FMLA rights have been violated, the employee may file a complaint with the Department of Labor or file a private lawsuit in Federal or State court. If the employer has violated the employee's FMLA rights, the employee is entitled to reimbursement for any monetary loss incurred, equitable relief as appropriate, interest, attorneys' fees, expert witness fees, and court costs. Liquidated damages also may be awarded. 29 U.S.C. 2617.

Title I of the FMLA is administered by the U.S. Department of Labor and applies to private sector employers of 50 or more employees, public agencies, and certain Federal employers and entities, such as the U.S. Postal Service and Postal Rate Commission. Title II is administered by the U.S. Office of Personnel Management and applies to civil service employees covered by the annual and sick leave system established under 5 U.S.C. Chapter 63 and certain employees covered by other Federal leave systems. Title III established a temporary Commission on Leave to conduct a study and report on existing and proposed policies on leave and the costs, benefits, and impact on productivity of such policies. Title IV contains provisions governing the effect of the FMLA on more generous leave policies, other laws, and existing employment benefits. Finally, Title V originally extended the leave provisions to certain employees of the U.S. Senate and House of Representatives; however, such coverage was repealed and replaced by the Congressional Accountability Act of 1995. 2 U.S.C. 1301.

B. Who the Law Covers

The FMLA generally covers employers with 50 or more employees. To be eligible to take FMLA leave, an employee must meet specified criteria, including employment with a covered employer for at least 12 months, performance of a specified number of hours of service in the 12 months prior to the start of leave, and work at a location where there are at least 50 employees within 75 miles.

C. Regulatory History

The FMLA required the Department to issue initial regulations to implement Title I and Title IV of the FMLA within 120 days (by June 5, 1993) with an effective date of August 5, 1993. The Department published an NPRM in the **Federal Register** on March 10, 1993. 58 FR 13394. The Department received comments from a wide variety of stakeholders, and after considering these comments the Department issued an interim final rule on June 4, 1993, effective August 5, 1993. 58 FR 31794.

After publication, the Department invited further public comment on the interim regulations. 58 FR 45433. During this comment period, the Department received a significant number of substantive and editorial comments on the interim regulations from a wide variety of stakeholders. Based on this second round of public comments, the Department published final regulations to implement the FMLA on January 6, 1995. 60 FR 2180. The regulations were amended February 3, 1995 (60 FR 6658) and March 30, 1995 (60 FR 16382) to make minor technical corrections. The final regulations went into effect on April 6, 1995.

On December 1, 2006, the Department published a Request for Information (RFI) in the **Federal Register** requesting public comment on its experiences with and observations of the Department's administration of the FMLA and the effectiveness of the regulations. 71 FR 69504. The Department received comments from workers, family members, employers, academics, and other interested parties, ranging from personal accounts, surveys, and legal reviews, to academic studies and recommendations for regulatory and statutory changes to the FMLA. The Department published its Report on the comments in the **Federal Register** on June 28, 2007. 72 FR 35550.

The Department published an NPRM in the **Federal Register** on February 11, 2008 proposing changes to the FMLA's regulations based on the Department's experience administering the law, two Department of Labor studies and reports on the FMLA issued in 1996 and 2001, several U.S. Supreme Court and lower court rulings on the FMLA, and a review of the comments received in response to the RFI. 73 FR 7876. The Department also sought comments on the recently enacted military family leave statutory provisions. In response to the NPRM, the Department received thousands of comments from a wide variety of stakeholders. The Department issued a final rule on November 17, 2008, which became effective on January 16, 2009. 73 FR 67934.

D. Updates to the Military Family Leave Provisions

Section 565(a) of the FY 2010 NDAA, enacted on October 28, 2009, amends the military family leave provisions of the FMLA. Public Law 111–84. The FY 2010 NDAA expands the availability of qualifying exigency leave and military caregiver leave. Qualifying exigency leave, which was made available to family members of the National Guard and Reserve components under the FY 2008 NDAA, is expanded to include family members of the Regular Armed

Forces. The entitlement to qualifying exigency leave is expanded by substituting the term ''covered active duty'' for ''active duty'' and defining covered active duty for a member of the Regular Armed Forces as ''duty during the deployment of the member with the Armed Forces to a foreign country'', and for a member of the Reserve components of the Armed Forces as ''duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.'' 29 U.S.C. 2611(14).[1] Prior to the FY 2010 NDAA amendments, there was no requirement that members of the National Guard and Reserves be deployed to a foreign country.

The FY 2010 NDAA amendments expand the definition of a serious injury or illness for military caregiver leave for current members of the Armed Forces to include an injury or illness that existed prior to service and was aggravated in the line of duty on active duty. 29 U.S.C. 2611(18)(A). These amendments also expand the military caregiver leave provisions of the FMLA to allow family members to take military caregiver leave to care for certain veterans. The definition of a covered servicemember, which is the term the Act uses to indicate the group of military members for whom military caregiver leave may be taken, is broadened to include a veteran with a serious injury or illness who is receiving medical treatment, recuperation, or therapy, if the veteran was a member of the Armed Forces at any time during the period of five years preceding the date of the medical treatment, recuperation, or therapy. 29 U.S.C. 2611(15)(B). The amendments define a serious injury or illness for a veteran as a ''qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.'' 29 U.S.C. 2611(18)(B).

As was the case with the FY 2008 NDAA, the FY 2010 NDAA is silent as to the effective date of the FMLA amendments. Because the FY 2008 NDAA required the Secretary of Labor to define the term ''qualifying exigency'', the Department took the position that employers were not obligated to provide qualifying exigency leave to employees until the Department defined the term through regulation. 73 FR 7925. In contrast, the Department viewed the military caregiver leave provisions of the FY 2008 NDAA as being effective as of January 28, 2008, the signing date of the amendment. *Id.* Like the FY 2008 NDAA, the FY 2010 NDAA also requires the Secretary of Labor to define a key term in the amendment—''serious injury or illness of a veteran''. Public Law 111–84, sec. 565(a)(3); 29 U.S.C. 2611(18)(B). It is the Department's position that employers are not required to provide employees with military caregiver leave to care for a veteran until the Department defines a qualifying serious injury or illness of a veteran through regulation. However, employers are not prohibited from providing leave to employees to care for an injured or ill veteran if they choose to do so before the Department issues a final rule defining those terms, although any such leave would not be FMLA-protected and would not count against the employees' FMLA entitlement. It is also the Department's position that the provisions of the FY 2010 NDAA expanding qualifying exigency leave to cover qualifying exigencies arising from the foreign deployment of a family member in the Regular Armed Forces became effective on the date of enactment, October 29, 2009.

E. Amendments to Eligibility Criteria for Airline Flight Crewmembers and Flight Attendants

On December 21, 2009, the AFCTCA was enacted, establishing a special minimum hours of service eligibility requirement for airline flight crew employees. The AFCTCA provides that an airline flight crew employee will meet the hours of service eligibility requirement if he or she has worked or been paid for not less than 60 percent of the applicable total monthly guarantee (or its equivalent) and has worked or been paid for not less than 504 hours (not including personal commute time or time spent on vacation, medical, or sick leave) during the previous 12 months. Airline flight crew employees continue to be subject to the FMLA's other eligibility requirements.

The AFCTCA is silent as to its effective date. Because the AFCTCA is explicit about how to calculate the hours of service requirement for airline flight crew employees, it is the Department's position that the amendment became effective on the date of enactment. While the AFCTCA authorizes the Department to promulgate regulations on how to calculate the FMLA leave entitlement for airline flight crew employees, the authorization is permissive and does not require the Department to engage in rulemaking (unlike the FY 2010 NDAA provision requiring the Department to define serious injury or illness of a veteran).

Because the Department is not statutorily required to issue regulations to effectuate the AFCTCA, and employers can provide leave to airline flight crew employees under the current FMLA regulations, it is the Department's position that employees became entitled to take leave under the AFCTCA as of December 21, 2009. Until the Department issues a final rule specifically addressing calculating FMLA leave usage for flight crew employees, the Department will exercise its discretion in assessing employer compliance, in light of the individual facts and circumstances, with current § 825.205.

F. Regulatory Look Back Review

In complying with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' the Department sought public comment in March 2011 to inform its design of a framework to review its significant rules. The review would determine whether these rules are obsolete, unnecessary, unjustified, excessively burdensome, counterproductive, or duplicative of other Federal regulations. Specifically, the Department sought comment on which regulations should be considered for review, expansion, or modification. The Department utilized an interactive Web site (*www.dol.gov/regulations/regreview.htm*) and published a Request for Information in the **Federal Register** (76 FR 15224) for the public to provide comments.

The Department received three comments concerning the FMLA. The first commenter requested clarification on § 825.218, regarding substantial and grievous economic injury. Upon review of the comment, the Department determined that there was no need to clarify this section through regulatory change.

The second comment the Department received concerned § 825.204, ''Transfer of an Employee to an Alternative Position During Intermittent Leave or Reduced Schedule Leave.'' The commenter suggested extending the employer's ability to transfer an employee to an alternative positive for

[1] As with the FY 2008 NDAA, the FY 2010 NDAA references 10 U.S.C. 101(a)(13)(B), which covers call ups of the National Guard and Reserves and certain retired members of the Regular Armed Forces and Reserves in support of contingency operations. 73 FR 67954–55. For simplicity, the terms ''National Guard and Reserve'' and ''Reserve components'' are used interchangeably throughout this document and refer to these categories of military members.

intermittent leave that is foreseen but unscheduled. The Department responded to similar comments in the 2008 final rule. As the Department noted at that time, by expressly permitting transfers in cases of intermittent or reduced schedule leave ''that is foreseeable based on planned medical treatment,'' 29 U.S.C. 2612(b)(2), the statutory language strongly suggests that this is the only situation where such transfers are allowed. 73 FR 67975. The Department continues to find no statutory basis to permit transfers to an alternative position for employees taking unscheduled or unforeseeable intermittent leave, and declines to expand the situations in which an employer may temporarily transfer an employee to an alternative position. *Id.*

The last comment that the Department received suggested excluding from the Act's protections medical conditions that the commenter believes are subjectively determined. The regulations provide an objective definition of ''serious health condition'' as well as a process for employers to request a certification of a serious health condition from the employee's (or family member's) health care practitioner. Additionally, where the employer has reason to doubt the validity of the initial certification, the employer may require a second and, if necessary, third opinion from a health care practitioner. Given the procedures available for ensuring certification of a serious health condition by a health care practitioner, the Department does not believe that issuing further regulatory changes at this time is warranted.

III. Section-by-Section Analysis of Proposed Changes to the FMLA Regulations

The following is a section-by-section analysis of the proposed revisions to the FMLA regulations. The primary sections of the regulations with proposed revisions to implement the FY 2010 NDAA amendments are: § 825.126 (Leave because of a qualifying exigency); § 825.127 (Leave to care for a covered servicemember with a serious injury or illness); § 825.309 (Certification for leave taken because of a qualifying exigency); and § 825.310 (Certification for leave taken to care for a covered servicemember (military caregiver leave)). Less substantive changes are proposed to § 825.122 (Definitions of spouse, parent, son or daughter, next of kin of a covered servicemember, adoption, foster care, son or daughter on active duty or call to active duty status, son or daughter of a covered servicemember, and parent of a covered servicemember) and § 825.800 (Definitions) to reflect new definitions related to military family leave. The primary sections of the regulations with proposed revisions to implement the AFCTCA are: § 825.110 (Eligible employee); § 825.205 (Increments of FMLA leave for intermittent or reduced schedule leave); § 825.500 (Record-keeping requirements); and § 825.800 (Definitions) to include definitions specific to airline flight crew employees.

The Department further proposes to move the definitions section of the regulations from § 825.800 to § 825.102, which is currently reserved. The Department believes that placing the definitions section at the beginning of the regulations is more helpful to the reader, and consistent with other regulations implementing statutes administered by the WHD. Unless specifically discussed, no further substantive changes are proposed to this section.

The Department intends to make corresponding minor changes to the FMLA poster (WHD publication 1420), the Notice of Eligibility and Rights and Responsibilities (Form WHD–381), the Certification for Qualifying Exigency Leave for Military Family Leave (Form WHD–384), and the Certification for Serious Injury or Illness of a Covered Servicemember for Military Family Leave (Form WHD–385) to reflect the FY 2010 NDAA amendments and the AFCTCA. The Department also intends to develop a new form for the certification for the serious injury or illness of a covered veteran. The Department also proposes to remove the optional-use forms and notices from the regulations' Appendices. The removed forms and notices are medical certification forms WH–380–E (Certification of Health Care Provider—Employee), WH–380–F (Certification of Health Care Provider—Family Member), WH–384 (Certification of Qualifying Exigency for Military Family Leave), and WH–385 (Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave); notification forms WH–381 (Notice of Eligibility and Rights & Responsibilities) and WH–382 (Designation Notice to Employee of FMLA Leave); and the Notice to Employees of Rights under FMLA (WH Publication 1420).

The Department's prototype forms are intended to facilitate the information collection requirements of the FMLA. These information collections are subject to the requirements of the Paperwork Reduction Act of 1995 (PRA). The Department, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information every three years in accordance with the requirements of the PRA. Substantive changes to the forms as they appear in the Appendices require additional and separate rulemaking activities.

The PRA clearance process has sometimes resulted in updates to the forms that differed from the version of the forms that appeared in the Appendices to the regulations. The Department believes that multiple versions of the forms have created needless confusion for the public, and in an effort to lessen this confusion the Department proposes to remove the forms from the regulations. The forms will continue to be available on the WHD Web site. The Department believes that removing the forms from the regulations, and thereby streamlining the clearance process, will permit the forms to be more expeditiously amended in response to statutory and other changes, as well as suggestions from the public. This will ensure that the most accurate and up-to-date forms are available to the public. Although the Department is proposing to remove the forms from the regulations, this proposed change does not alter the Department's belief that the forms facilitate employer and employee compliance with their respective obligations under the FMLA. Employers are permitted to use forms other than those issued by the Department so long as they do not require information beyond that specified in the regulations. *See* 29 CFR §§ 825.306, 825.309, 825.310. However, if an employee provides sufficient certification regardless of format, no additional information may be requested.

Minor changes to more accurately reflect the new military family leave and airline flightcrew employee eligibility provisions or to delete references to Appendices for prototype forms or notices, are proposed at: §§ 825.100, 825.101, 825.107, 825.112, 825.200, 825.213, 825.300, 825.302, 825.303 and 825.306. The Department also proposes to correct inadvertent drafting errors that were made in the 2008 final rule, including correcting the cross-references in current § 825.200(g) and (f), and inserting the word ''spouse'' in the first lines of § 825.202(b) and (b)(1). The Department also proposes to include the word ''the'' in the statutory phrase ''in line of duty'' where used in the regulations. The URL for the WHD Web site has also been updated to link

viewers directly to the WHD site. This proposed change appears in: §§ 825.300, 825.306, and 825.309. These proposed changes are not addressed in the section-by-section analysis. The addition of definitions to current § 825.800 and its relocation to reserved § 825.102 is also not addressed in the section-by-section analysis.

A. Revisions To Implement the FY 2010 NDAA amendments

1. Section 825.122—Definitions of Spouse, Parent, Son or Daughter, Next of Kin of a Covered Servicemember, Adoption, Foster Care, Son or Daughter on Active Duty or Call or Order to Active Duty Status, Son or Daughter of a Covered Servicemember, and Parent of a Covered Servicemember

The Department proposes to add a definition of ''covered servicemember'' as new paragraph (a) of this section to reflect the addition of covered veterans as covered servicemembers under the FY 2010 NDAA. As a result, the Department proposes to renumber the paragraphs that follow. The Department also proposes to change the term ''active duty'' to ''covered active duty'' in each place it appears in both the title of this section and in paragraph (g), and to update the reference in this paragraph to proposed § 825.126(a)(5).

2. Section 825.126—Leave Because of a Qualifying Exigency

Section 585 of the FY 2008 NDAA provided that eligible employees of covered employers may take FMLA leave for any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or has been notified of an impending call or order to active duty in support of a contingency operation. Public Law 110–181; § 585(a). The FY 2008 NDAA defined ''active duty'' as a call or order to active duty under a provision of law referred to in 10 U.S.C. 101(a)(13)(B). *Id.* The provisions referred to in 10 U.S.C. 101(a)(13)(B) are: sections 688, 12301(a), 12302, 12304, 12305, and 12406 of Title 10 of the United States Code; Chapter 15 of Title 10 of the United States Code; and any other provision of law during a war or during a national emergency declared by the President or Congress. These provisions are limited to duty by members of the Reserve components, the National Guard, and certain retired members of the Regular Armed Forces and retired Reserve under a call or order to active duty. The FY 2008 NDAA amendment thus limited the availability of qualifying exigency leave to family members of members of the Reserve components. The entitlement to qualifying exigency leave did not extend to family members of the Regular Armed Forces on active duty status because members of the Regular Armed Forces either do not serve ''under a call or order to active duty'' or are not identified in the provisions of law referred to in 10 U.S.C. 101(a)(13)(B). 73 FR 67954–55.

The FY 2010 NDAA further amends the FMLA to permit an eligible employee to take FMLA leave for any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty, or has been notified of an impending call or order to covered active duty in the Armed Forces. Public Law 111–84, § 565(a)(1)(B); *see* 29 U.S.C. 2612(a)(1)(E). The FY 2010 NDAA provisions define ''covered active duty'' to include duty by members of the Regular Armed Forces during deployment to a foreign country, and duty by members of the Reserve components during deployment to a foreign country under a call or order to active duty under a provision of law referred to in section 101(13)(B) of title 10, United States Code. 29 U.S.C. 2611(14). Thus, these new provisions entitle qualifying family members to FMLA leave for qualifying exigencies arising from foreign deployments of Regular Armed Forces members, and add a foreign deployment requirement to the type of call or order to active duty required for the Reserve components of the Armed Forces.

Section 825.126 is currently organized into two parts: (a) The specific circumstances under which qualifying exigency leave may be taken; and (b) an employee's entitlement to qualifying exigency leave. The Department proposes to keep these two provisions, but reverse the order in which they appear. The Department has learned from employers and employees that there is confusion about the military family provisions. The Department believes that it is more logical to outline an employee's entitlement to qualifying exigency leave first, and then to specify the circumstances under which the employee may take qualifying exigency leave. The Department expects that this reordering will be less confusing to the public. Thus, proposed § 825.126(a) covers an employee's entitlement to qualifying exigency leave (currently addressed in § 825.126(b)) and proposed § 825.126(b) identifies the specific circumstances under which qualifying exigency leave may be taken (currently addressed in § 825.126(a)). As discussed below, the Department further proposes to revise § 825.126 to incorporate the FY 2010 NDAA amendments.

The Department proposes to substitute in this section (as well as throughout the regulations wherever the term appears) ''covered active duty'' for ''active duty'' to incorporate the FY 2010 NDAA statutory language. The Department also proposes to delete references in this section (as well as throughout the regulations wherever the term appears) to ''covered military member'' and instead use the generic term ''military member'' or ''member'' to refer to members of the Armed Forces on covered active duty as defined by the statute. As discussed above, the FY 2008 NDAA restricted entitlement to qualifying exigency leave to an employee whose parent, spouse, son, or daughter is a member of the National Guard and Reserves under an impending call or order to active duty in support of a contingency operation. In the 2008 final rule, the Department introduced the term ''covered military member'' to reflect that the military member must be the parent, spouse, son or daughter of the employee. This term has also come to reflect the restrictive nature of qualifying exigency leave under the FY 2008 NDAA, *i.e.,* that such leave was limited to qualifying family members of Reserve component members. The FY 2010 NDAA amendment extends the entitlement for qualifying exigency leave to family members of Regular Armed Forces members, and therefore, the limiting term ''covered military member'' is no longer relevant and may be unnecessarily confusing. Similarly, the use of the term ''covered active duty'' rather than ''active duty'' will more accurately reflect the fact that there are limitations on the types of active duty that can give rise to qualifying exigency leave. The Department intends to make the provisions of qualifying exigency leave more understandable to the public by using the statutory term ''covered active duty'' and referring generically to the military member throughout the regulation, and seeks comment on this proposed change.

Current § 825.126(a) states the statutory entitlement that eligible employees may take FMLA leave while the employee's spouse, son, daughter, or parent is on active duty or call to active duty status (this paragraph continues by listing the specific qualifying exigencies for which leave may be taken). Similarly, proposed § 825.126(a) sets out the statutory entitlement that an eligible employee may take leave for any qualifying exigency arising out of the covered active duty or call to covered active duty status of the employee's

spouse, son, daughter, or parent. The list of specific qualifying exigencies in current paragraph (a) is moved to proposed paragraph (b).

Proposed § 825.126(a)(1) defines ''covered active duty or call to covered active duty'' status for a member of the Regular Armed Forces as ''duty under a call or order to active duty (or notification of an impending call or order to covered active duty) during the deployment of the member with the Armed Forces to a foreign country,'' and states that the active duty orders will generally specify if the member's deployment is to a foreign country. In accordance with the FY 2010 NDAA, the Department deleted the statement in current § 825.126(b)(2)(i) that family members of members of the Regular Armed Forces are not entitled to qualifying exigency leave.

Proposed § 825.126(a)(2) defines ''covered active duty or call to covered active duty'' status for a member of the Reserve components as duty under a call or order to active duty (or notification of an impending call or order to active duty) during the deployment of the member to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to the provisions of law referred to in 10 U.S.C. 101(a)(13)(B). The provisions referred to in 10 U.S.C. 101(a)(13)(B) are 10 U.S.C. 688, 12301(a), 12302, 12304, 12305, 12406; 10 U.S.C. chapter 15; and any other provision of law during a war or during a national emergency declared by the President or Congress. While FY 2010 NDAA struck the definition of ''contingency operation'' from the FMLA and deleted the reference to ''contingency operation'' in 29 U.S.C. 2612(a)(1)(E), the Department believes that the reference to 10 U.S.C. 101(a)(13)(B) in the definition of covered active duty for members of the Reserve components continues to require that members of the Reserve components be called to duty in support of a contingency operation in order for their family members to be entitled to qualifying exigency leave. Therefore, proposed § 825.126(a)(2) maintains the language in current § 825.126(b)(2) regarding duty in support of a contingency operation. The Department also proposes to use the word ''Federal'' in proposed paragraph § 825.126(a)(2) in describing the covered calls or orders to active duty in order to make clear that only Federal calls to duty will meet the definition of covered active duty.

Proposed paragraph § 825.126(a)(2)(i) lists the specific Reserve components currently found in § 825.126(b)(2)(i). Proposed paragraph § 825.126(a)(2)(ii) follows current § 825.126(b)(3) in that it provides that the active duty orders of a member of the Reserve components will generally specify if the covered active duty military member is serving in support of a contingency operation by citing the relevant section of Title 10 of the United States Code and/or by reference to the specific name of the contingency operation as is stated in current § 825.126(b)(3). Proposed § 825.126(a)(2)(ii) also states that the active duty orders will specify that the deployment is to a foreign country.

The Department proposes in paragraph § 825.126(a)(3) to define deployment of the member with the Armed Forces to a foreign country as deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including deployment in international waters. This definition is consistent with the Department's understanding of the term ''deployment'' based on consultations with the Department of Defense (DOD). The Department understands that servicemembers are assigned to a home station [2] and deployment is the relocation of forces and materials from that home station to an operational area. The term does not include reassignments to a new duty station or deployment for training exercises.

In addition, the definition of ''deployment'' in proposed paragraph § 825.126(a)(3) includes deployment of the military member to active duty in international waters. The Department understands Congress to have intended to extend the entitlement of qualifying exigency leave to family members of all branches of the military equally. The Department seeks to ensure that family members of the Navy, Coast Guard, and other military members deployed to duty in international waters have access to qualifying exigency leave. The Department seeks comment on the types of duty assignments for members of the Navy and Coast Guard that will satisfy the definition of deployment.

The Department proposes in § 825.126(a)(4) to specify, as current § 825.126(b)(2)(ii) does, that covered deployments are limited to Federal calls to active duty. Finally, the Department proposes to move the definition of ''son or daughter on active duty or call to active duty status'' currently located at § 825.126(b)(1) to paragraph § 825.126(a)(5).

Current § 825.126(a) lists the reasons, divided into eight categories, for which an eligible employee may take qualifying exigency leave. The qualifying exigency leave categories are: (1) *Short-notice deployment,* (2) *Military events and related activities,* (3) *Childcare and school activities,* (4) *Financial and legal arrangements,* (5) *Counseling,* (6) *Rest and recuperation,* (7) *Post-deployment activities,* and (8) *Additional activities.* The Department proposes to move this list to § 825.126(b); the paragraph numbers that correspond to the eight categories will remain the same. As noted above, the Department proposes to replace the term ''active duty'' with ''covered active duty'' and ''covered military member'' with ''military member'' or ''member'' throughout this section. Where no additional changes are made within a category of qualifying exigency, and the Department is not specifically requesting additional information, that category is not discussed further in this proposal.

Current § 825.126(a)(1) sets forth the requirements for *Short-notice deployment* qualifying exigency leave. Leave taken for this purpose may be used for a period of seven calendar days beginning with the date the military member is notified of an impending call or order to covered active duty. The Department seeks public comment on whether the seven calendar day period remains appropriate for this type of qualifying exigency.

Current § 825.126(a)(3), *Childcare and school activities,* allows eligible employees to take qualifying exigency leave to arrange childcare or attend certain school activities for a military member's son or daughter. The Department proposes to delete repetitive text throughout this paragraph identifying the relationship between the child and the military member. Instead, proposed paragraph § 825.126(b)(3) states that for purposes of the childcare and school activities leave listed in § 825.126(b)(3)(i) through (iv), the child must be ''the military member's biological, adopted, or foster child, stepchild, legal ward, or child for whom the military member stands in loco parentis, who is either under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence.'' Proposed § 825.126(b)(3) also adds language to clarify that, as with all instances of qualifying exigency leave, the military member must be the spouse, son, daughter, or parent of the employee

[2] According to The Joint Publication 1–02, Department of Defense Dictionary of Military and Associated Terms, 8 November 2010 (as amended through 15 August 2011), ''home station'' is defined as the permanent location of active duty units and Reserve Component units (*e.g.,* location of armory or reserve center).

requesting leave. The Department believes this clarifying language is necessary because of this section's unique relationship requirements. While the military member must be the spouse, parent, or son or daughter of the eligible employee, the child for whom childcare leave is sought need *not* be a child of the employee requesting leave. For example, the employee may be the mother of the military member and may need qualifying exigency childcare and school activities leave for the military member's child.

Current § 825.126(a)(6), *Rest and recuperation,* allows an eligible employee to take up to five days of leave to spend time with a military member on rest and recuperation leave during a period of deployment. The Department proposes in § 825.126(b)(6) to capitalize *Rest and Recuperation* to reflect that this type of leave corresponds directly to the DOD Rest and Recuperation leave programs (*e.g.,* USCENTCOM R & R leave). The Department also proposes to expand the maximum duration of Rest and Recuperation qualifying exigency leave from five to 15 days. The DOD has advised the Department that the actual number of days of Rest and Recuperation leave provided by the military varies, with some military members receiving as many as 15 days, depending upon the length of their deployment. The Department proposes to allow the amount of leave an employee may take for Rest and Recuperation qualifying exigency leave to equal that provided to the military member, up to a maximum of 15 days. The Department has received information from employees indicating that the amount of time granted to a military member for Rest and Recuperation leave is generally longer than the five days permitted by the regulations, and due to the nature of the deployments, five days, as permitted by the current regulations, is an insufficient amount of time for leave. As noted in the 2008 final rule, there are limited opportunities available for military members to spend time with their families while on active duty and it is important to foster strong relationships among military families. 73 FR 67961. The Department believes it is appropriate to make the availability of this type of FMLA-qualifying exigency leave consistent with the leave actually provided by the military to the member on covered active duty. The Department seeks comment on the expansion of *Rest and Recuperation* qualifying exigency leave and whether the proposed 15 day period is sufficient in all instances.

The Department is also proposing to add language to § 825.126(7), *Post-deployment activities.* Current § 825.126(b)(7)(ii) permits an employee to take qualifying exigency leave to address issues that arise from the death of a military member while on covered active duty status. The Department proposes to add attending funeral services as an additional example to the activities that are covered by such leave.

The Department proposes no additional qualifying exigencies for which FMLA leave may be taken, but invites comment on whether additional qualifying exigencies should be added in light of the extension of this leave entitlement to family members of members of the Regular Armed Forces. The Department notes that the categories of leave in the current and proposed regulations include activities that may take place in advance of deployment (pre-deployment activities), during deployment, and limited activities that occur after deployment has ended (post-deployment activities). While the FY 2010 NDAA defines ''covered active duty'' as ''duty during the deployment of the member,'' the Department continues to believe that it is appropriate to include certain pre-deployment activities to reflect Congressional intent to include exigencies arising from notification of ''an *impending* call or order to covered active duty''. 29 U.S.C. 2612(a)(1)(E) (emphasis added). Similarly, the Department continues to believe that it is appropriate to include as qualifying exigencies limited post-deployment activities the need for which immediately and foreseeably arise from the military member's covered active duty. This interpretation and reasoning is consistent with that outlined in the 2008 final rule. 73 FR 67961.

No other changes are proposed to § 825.126.

3. Section 825.127 Leave To Care for a Covered Servicemember With a Serious Injury or Illness

Section 585(a) of the FY 2008 NDAA amended the FMLA to allow an eligible employee who is a covered servicemember's spouse, son, daughter, parent, or next of kin to take up to 26 workweeks of leave during a ''single 12-month period'' to care for a servicemember receiving treatment for a serious injury or illness (''military caregiver leave''). Such leave can be taken to provide care to a current member of the Armed Forces, including the National Guard and Reserves. These provisions were incorporated in current § 825.127, which explains an employee's entitlement to military caregiver leave and the specific circumstances under which military caregiver leave may be taken.

Section 565(a) of the FY 2010 NDAA further amends the FMLA to revise the definition of ''covered servicemember'' to include certain veterans and to expand coverage for military caregiver leave to eligible employees caring for such veterans with a qualifying (as defined by the Secretary of Labor) injury or illness. 29 U.S.C. 2611(15)(B). It also amends the FMLA to revise the definition of serious injury or illness for current members of the Armed Forces to include conditions that existed before the covered servicemembers' active duty but were aggravated by service in the line of duty on active duty. 29 U.S.C. 2611(18)(A). A serious injury or illness for a veteran similarly includes conditions that existed before the veteran's active duty but were aggravated by service in the line of duty on active duty and that manifested before or after the servicemember became a veteran. 29 U.S.C. 2611(18)(B).

The Department proposes to reorganize § 825.127 to reflect the substantive changes to the military caregiver leave provisions pursuant to the FY 2010 NDAA amendments. In addition, the proposal adds the term ''military caregiver leave'' to the title of this section for clarity. Current paragraph § 825.127(b), which defines the family members qualified to take caregiver leave, is moved to proposed paragraph § 825.127(d). Current paragraph § 825.127(d), which addresses circumstances when a husband and wife who are both eligible for FMLA leave work for the same employer, is moved to proposed § 825.127(f). Because no substantive changes are proposed to these sections they are not discussed further.

Current § 825.127(a) provides that an eligible employee may take FMLA leave to care for a current member of the Armed Forces, including National Guard and Reserves members, with a serious injury or illness incurred in the line of duty on active duty for which the servicemember is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list. This section of the current regulations incorporates the statutory definition of a covered servicemember pursuant to the FY 2008 NDAA, and states that the definition of a covered servicemember does not include former members of the Regular Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list. Consistent with the FY 2010 NDAA

expansion of military caregiver leave to care for certain veterans, the current statement that military caregiver leave does not apply to former members of the military is deleted from proposed paragraph (a). The definitions set forth in current paragraphs (a)(1) and (2) are incorporated in proposed paragraphs (b) and (c), discussed below. Proposed paragraph § 825.127(a) simply states that eligible employees are entitled to FMLA leave to care for a covered servicemember with a serious injury or illness.

Proposed § 825.127(b) provides the definition of covered servicemember for current members of the Armed Forces and for covered veterans. Proposed § 825.127(b)(1) defines covered servicemember as it applies to current members of the Armed Forces, including members of the National Guard or Reserves. This definition mirrors the statutory definition. 29 U.S.C. 2611(15)(A). This paragraph also incorporates the definition of ''outpatient status'' from current § 825.127(a)(2), which is applicable only to current members of the Armed Forces.

Proposed § 825.127(b)(2) defines covered servicemember, as it applies to veterans, to mean a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness. It further defines a covered veteran as an individual who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. This definition combines the FY 2010 NDAA statutory definition of a ''veteran'' (which incorporates the definition of veteran in 38 U.S.C. 101) and the statutory limitations on the inclusion of veterans as covered servicemembers. 29 U.S.C. 2611(15)(B) (a veteran will be a covered servicemember if he or she is ''undergoing medical treatment, recuperation, or therapy for a serious injury or illness [and the veteran] was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.''); 29 U.S.C. 2611(19) (adopting 38 U.S.C. 101 definition of veteran, which defines the term as ''a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable''). The Department proposes to measure the five-year period from the date the employee first takes leave to care for the veteran, and to permit an employee to continue leave begun within the five-year period until the end of the applicable ''single 12-month period''. A veteran will be considered a covered veteran if he or she was a member of the Armed Forces within the five-year period immediately preceding the date the requested leave is to begin. If the leave commences within the five-year period, the employee may continue leave for the applicable ''single 12-month period'', even if it extends beyond the five-year period. The Department believes this interpretation is consistent with the intent of Congress in limiting FMLA leave to care for certain veterans to a specified time period. This interpretation may exclude veterans of previous conflicts (*e.g.,* Gulf War veterans), and may exclude certain veterans of the War in Afghanistan and Operation Iraqi Freedom, depending on the veteran's discharge date and the date the eligible employee's leave is to begin. The Department invites comment on this interpretation.

Proposed § 825.127(c) provides the definition of serious injury or illness for current members of the Armed Forces and for covered veterans. Proposed § 825.127(c)(1) incorporates the definition of serious injury or illness of a current servicemember from current § 825.127(a)(1), and expands it to include an injury or illness that existed prior to the beginning of the member's active duty but was aggravated by service in the line of duty on active duty in the Armed Forces, consistent with the statutory definition of this term as amended by the FY 2010 NDAA. 29 U.S.C. 2611(18)(A).

For both current members of the Armed Forces and covered veterans, a serious injury or illness that existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty on active duty includes both conditions that were noted at the time of entrance into active service and conditions that the military was unaware of at the time of entrance into active service but that are later determined to have existed at that time. A preexisting injury or illness will generally be considered to have been aggravated by service in the line of duty on active duty where there is an increase in the severity of such injury or illness during service, unless there is a specific finding that the increase in severity is due to the natural progression of the injury or illness. It is the Department's understanding that individuals will not be accepted for military service in the Regular or Reserve components unless they are: (1) Free of contagious diseases that probably will endanger the health of other personnel; (2) free of medical conditions or physical defects that may require excessive time lost from duty for necessary treatment or hospitalization, or probably will result in separation for medical unfitness; (3) medically capable of satisfactorily completing required training; (4) medically adaptable to the military environment without the necessity of geographical area limitations; and (5) medically capable of performing duties without aggravation of existing physical defects or medical conditions. DOD Instruction Number 6130.03 on Medical Standards for Appointment, Enlistment or Induction in the Military Service. In light of these standards, the Department seeks comments, particularly from military members and their families, concerning types of injuries or illnesses that may exist prior to service and be aggravated in the line of duty on active duty to such an extent as to render the servicemember unable to perform the duties of the member's office, grade, rank, or rating.

The FY 2010 NDAA requires the Department to define a qualifying serious injury or illness for a veteran. Proposed § 825.127(c)(2) defines serious injury or illness for a covered veteran with three alternative definitions set out in paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii). Proposed § 825.127(c)(2)(i) defines a serious injury or illness of a covered veteran as a serious injury or illness of a current servicemember, as defined in § 825.127(c)(1), that continues after the servicemember becomes a veteran. Thus, if a veteran suffered a serious injury or illness when he or she was a current member of the Armed Forces and that same injury or illness continues after the member leaves the Armed Forces and becomes a veteran, the injury or illness will continue to qualify as a serious injury or illness warranting military caregiver leave. The Department believes that allowing qualifying family members to take leave to care for covered veterans who continue to suffer from these serious injuries or illnesses is consistent with Congressional intent, as evidenced by the extension of military caregiver leave provisions for veterans for a defined five-year period. As explained below, the Department believes that an eligible employee may take military caregiver leave for the same family member based on the same serious injury or illness when the family member is a current member of the Armed Forces and when the family member becomes a covered veteran.

Proposed § 825.127(c)(2)(ii) defines a serious injury or illness for a covered veteran as a physical or mental condition for which the covered veteran has received a Department of Veterans Affairs (VA) Service Related Disability Rating (VASRD) of 50 percent or higher and such VASRD rating is based, in whole or part, on the condition precipitating the need for caregiver leave. The Department's review indicates that a VASRD disability rating of 50 percent or greater encompasses disabilities or conditions such as amputations, severe burns, post traumatic stress syndrome, and severe traumatic brain injuries. The Department believes that there should be parity between a serious injury or illness of a covered veteran and a serious injury or illness for a current member of the Armed Forces, but also recognizes that veterans are in different circumstances than active duty military members. The standard for a serious injury or illness for current members of the Armed Forces cannot be directly applied to veterans because a veteran no longer has a military office, grade, rank, or rating against which to measure a condition that does not manifest until after the servicemember becomes a veteran. Further, veterans, unlike current military members, may participate in the civilian workforce.

The Department believes that a serious injury or illness that substantially impairs a veteran's ability to secure or follow a substantially gainful occupation by reason of service-connected disability should be a qualifying injury or illness for a covered veteran. The Department considered proposing the VASRD rating equal to the level at which, under VA regulations, the veteran is considered to be totally disabled, *i.e.,* that the veteran is unable to secure or follow a substantially gainful occupation by reason of service-connected disability. *See* 38 CFR 4.16. Section 4.16(a) of the VA regulations clarifies that for a veteran with one disability, a disability rating of 60 percent or higher constitutes a total disability, and for a veteran with two or more disabilities, at least one disability must be rated at 40 percent or more with sufficient additional disabilities to bring the combined rating to 70 percent or higher. However, the Department is concerned that veterans may suffer from injuries and illnesses that do not result in a ''total disability'' under the VASRD rating system, but which the Department believes should qualify as a serious injury or illness for military caregiver leave. For example, burns resulting in distortion or disfigurement (*see* 38 CFR 4.118), or psychological disorders resulting from stressful events (*see* 38 CFR 4.129) occurring in the line of duty on active duty may not result in a VASRD rating of 60 percent or higher, but nonetheless may be severe enough to substantially impair a veteran's ability to work and therefore should be considered qualifying injuries or illnesses. The Department is particularly concerned that military caregiver leave be available to family members of veterans suffering from, or receiving treatment for such injuries or illnesses, which may include continuing or follow-up treatment for burns, including skin grafts or other surgeries, and amputations, including prosthetic fittings, occupational therapy and similar care.

The Department also considered proposing the VASRD disability rating at a percentage below 50 percent. However, the Department determined that a lower threshold may capture injuries and illnesses that Congress did not intend to qualify as serious injuries or illnesses for which employees would be entitled to 26 workweeks of FMLA leave. For example, after a review of the VASRD rating schedules, the Department understands that a 30 percent VASRD rating may encompass conditions such as the loss of one ear (*see* 38 CFR 4.87), chronic laryngitis (*see* 38 CFR 4.97), moderate migraine (episodes once per month over several months) (*see* 38 CFR 4.124(a)), or severe acne (*see* 38 CFR 4.118). In attempting to achieve parity with the standard of a serious injury or illness for a current member of the Armed Forces, the Department concluded that a VASRD rating of 50 percent will more closely approximate a condition that substantially impairs a veteran's ability to work.

The Department is also concerned that establishment of a two-tier test, as used by the VA to reflect single and multiple disabilities, may be unnecessarily complicated for the purpose of defining a qualifying serious injury or illness for military caregiver leave. Therefore, after a careful review of VA regulations, the Department proposes a single threshold of an overall VASRD rating of 50 percent or higher (whether based on a single or multiple disabilities) as a qualifying serious injury or illness.

The Department seeks comments on several aspects of this proposed definition. First, the Department invites comment on whether the VASRD rating of 50 percent is the appropriate level of injury or illness to support a request for military caregiver leave. The Department specifically seeks comment on whether the VASRD rating of 50 percent is the proper percentage of disability to capture all injuries and illnesses that would warrant an employee taking military caregiver leave to care for a covered veteran. Second, while the standard reflects the VA's determination of a disability with respect to benefits, the Department seeks comment on whether a VASRD rating appropriately correlates to the veteran's need for care and ability to work, attend school or perform other daily activities. The Department also seeks comment on whether this standard should expressly reference limitations in a veteran's ability to attend school or perform other regular daily activities. The Department invites comment on whether there are circumstances in which a veteran would be able to work but would nonetheless need care because of an inability to perform other daily activities.

Proposed § 825.127(c)(2)(iii) is the third alternative definition of a serious injury or illness for a covered veteran; it covers injuries and illnesses that are not technically within the definition proposed in (c)(2)(i) or (ii), but are of similar severity. The Department recognizes that covered veterans may have injuries or illnesses that are similar in severity to the injuries or illnesses qualifying under proposed (c)(2)(i) but for which the veterans did not obtain certification as a serious injury or illness when they were current members of the military. Similarly, the Department recognizes that covered veterans may have injuries or illnesses that are similar in severity to the injuries or illnesses qualifying under proposed (c)(2)(ii) but for which the veterans have not received a VASRD rating. The Department also recognizes that covered veterans may need a family member to provide care for injuries or illnesses that, absent treatment, would be similar in severity to those qualifying under (c)(2)(i) and (ii). This third alternative definition of serious injury or illness for a covered veteran is intended to capture these types of injuries and illnesses.

The Department proposes to define a serious injury or illness for a covered veteran in the third alternative as a physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a service-connected disability, or would do so absent treatment. This proposed definition is intended to replicate the VASRD 50 percent disability rating standard under (c)(2)(ii) for situations in which the veteran does not have a service-related disability rating from the VA. The Department

expects that, when making determinations of serious injury or illness under this proposed definition, private health care providers will do so in the same way they make similar determinations for Social Security Disability claims and Workers' Compensation claims. Particularly with respect to Social Security Disability, health care providers must determine that an injury or illness ''substantially impairs'' the individual and determine whether the individual is able to gain or keep a ''substantially gainful occupation.''

As noted above, the standard in (c)(2)(ii) is based on VA regulations and disability determinations. For example, a covered veteran with post traumatic stress disorder who is usually able to work may need care from an employee-family member when an event triggers a reoccurrence of the associated depression and anxiety to a level that the veteran would be unable to work absent treatment. Although paragraph (c)(2)(iii) is intended to have the same degree of incapacity as that set forth in paragraph (c)(2)(ii), a certification of serious injury or illness under this section serves only to establish that the veteran has a condition that entitles his or her family member to military caregiver leave under the FMLA. Such a determination provides no basis for a determination of status, rights, or benefits for the VA or other agencies. The VA is the sole agency qualified to make any rating determination for purposes of VA-related rights or benefits.

The Department seeks comments from employees, employers, health care providers, and veterans as well as current military members on this proposed alternative definition. Specifically, the Department seeks comments on whether this proposal will be effective at capturing the serious injuries and illnesses that covered veterans suffer for which caregiving is needed by qualifying employee-family members and which will not be covered under proposed paragraphs (c)(2)(i) and (ii). In addition, the Department seeks comments on the ability of health care providers to certify a serious injury or illness for a covered veteran and the ability of employers to administer leave associated with a serious injury or illness for a covered veteran under this proposed definition. The Department is particularly concerned that this provision comprehensively encompasses traumatic brain injuries, post traumatic stress disorder, and other such conditions that may not manifest until some time after the member has become a veteran. Therefore, the Department also seeks comment on the types of injuries and illnesses that typically manifest after the member becomes a veteran, whether a family member is needed to care for the veteran for such injuries or illness and, if so, whether this proposed definition would cover such situations.

The Department notes another means through which the severity of an injured veteran's disability may be assessed. VA's Program of Comprehensive Assistance for Family Caregivers (*see Caregivers and Veterans Omnibus Health Services Act of 2010,* Public Law 111–163 and 38 CFR part 71) is designed to provide health care, travel, training, and financial benefits to certain eligible caregivers of veterans who are eligible for the program. In general, a veteran or servicemember undergoing medical discharge from the Armed Forces, is eligible for VA's Program of Comprehensive Assistance for Family Caregivers if the individual has incurred or aggravated a serious injury (including traumatic brain injuries, psychological trauma, or other mental disorders) in the line of duty on or after September 11, 2001; the serious injury renders the individual in need of a minimum of six continuous months of personal care services based on a variety of clinical criteria listed under 38 CFR 71.20 (c)(1)–(4); and it is in the best interest of the individual to participate in the program. *See* 38 CFR 71.20. According to VA, approximately 86 percent of veterans currently enrolled in the program have received a VASRD rating of 50 percent or greater, with approximately 50 percent having received a VASARD rating of 100 percent.

In an effort to minimize the burden placed on military families, the Department has worked with VA to understand the requirements that must be met to enroll in VA's Program of Comprehensive Assistance for Family Caregivers and utilize FMLA leave. Based on the eligibility requirements for VA's Program of Comprehensive Assistance for Family Caregivers, the Department believes that most veterans who qualify for the program meet the requirement of having a serious injury or illness as defined in this proposal for the purpose of FMLA caregiver leave. Accordingly, the Department is considering adding a fourth alternative to the definition of serious injury or illness of a veteran, enrollment in VA's Program of Comprehensive Assistance for Family Caregivers, and invites comment on whether this would appropriately help reduce the burden placed on military and veterans' families in being able to take FMLA leave.

As with the three definitions proposed in paragraphs (c)(2)(i)–(iii), enrollment in VA's Program of Comprehensive Assistance for Family Caregivers would establish only that the veteran has a serious injury or illness, and would not mean that the caregiver is automatically entitled to take FMLA leave. The person seeking to take FMLA military caregiver leave must qualify as a family member under the FMLA and meet the other eligibility criteria, and the veteran must meet the definition of a ''covered veteran'' in proposed § 825.127(b)(2).

The Department seeks comment, especially from caregivers and veterans who are currently enrolled in VA's Program of Comprehensive Assistance for Family Caregivers, on whether including enrollment in this program as another possible definition for establishing a qualifying serious injury or illness required to take FMLA leave would be helpful to veterans and caregivers in seeking FMLA leave for a covered veteran. Finally, the Department welcomes comments proposing other definitions not included above that would achieve the goals that the proposed definitions seek to achieve—namely, coverage of injuries or illnesses that covered veterans experience that approximate the severity of a serious injury or illness for current members of the military as defined in the statute and regulations.

Current § 825.127(c) explains how the ''single 12-month period'' in which eligible employees are entitled to take up to 26 workweeks of military caregiver leave is applied. This provision is moved to proposed paragraph § 825.127(e) (the numbering of the subparagraphs within this provision remain the same). Proposed paragraph § 825.127(e)(2) (current § 825.127(c)(2)) provides that the 26-workweek entitlement is to be applied as a per-covered servicemember, per-injury entitlement. Because the FY 2010 NDAA establishes two distinct categories of covered servicemembers (*i.e.,* a current member of the Armed Forces and a covered veteran) and because military caregiver leave is applied on a per-covered servicemember basis, an eligible employee could potentially take military caregiver leave to care for a covered servicemember who is a current member of the Armed Forces and then, at a later point when the same servicemember becomes a covered veteran, could take a subsequent period of military caregiver leave. The Department notes that all of the normal eligibility requirements,

such as the hours of service requirement, would apply in such a situation. Additionally, an employee may not take more than a combined total of 26 workweeks of FMLA leave during a ''single 12-month period.'' The Department seeks comment on this interpretation of the ''single 12-month period'' limitation.

The Department notes that under this provision, an eligible employee may take up to 26 workweeks of leave to care for the same covered servicemember with a subsequent serious injury or illness. As the Department explained in the 2008 final rule, a subsequent serious injury or illness of the same covered servicemember could arise either from an injury or illness incurred by a current member in a subsequent deployment, or from the subsequent manifestation of a second serious injury or illness to either a current member or a covered veteran that relates back to the initial incident. 73 FR 67969. For example, if a servicemember is injured in the line of duty on active duty and suffers severe burns, an eligible employee is entitled to 26-workweeks of caregiver leave. If the servicemember later manifests a traumatic brain injury that was incurred in the same incident as the burns, the eligible employee would be entitled to an additional 26-workweeks of leave to care for the same servicemember. The Department requests comment on whether the current regulatory language is sufficiently clear as to the situations in which an employee would be permitted to take a second period of military caregiver leave due to the subsequent serious injury or illness of the same covered servicemember.

Lastly, the Department proposes to make minor edits to internal references throughout this paragraph to reflect the reorganized structure of this section, to delete references to ''as described in paragraph (c) of this section'' as unnecessary, and to make two minor changes to paragraph (e)(3) (current § 825.127(c)(3)): adding internal numbering to facilitate readability, and changing ''week'' to ''workweek'' consistently throughout the paragraph.

4. Section 825.309 Certification Requirements for Leave Taken Because of a Qualifying Exigency

The FY 2010 NDAA amends 29 U.S.C. 2613(f), which addresses certification for qualifying exigency leave. Accordingly, as it did in § 825.126, the Department proposes to substitute ''covered active duty'' for ''active duty'' wherever it appears in this section. Consistent with the proposed change in § 825.126, the Department also proposes to substitute ''military member'' or ''member'' for ''covered military member'' wherever it appears.

Proposed § 825.309(a) follows current § 825.309(a) and states that the first time an employee requests leave because of a qualifying exigency, an employer may require the employee to provide a copy of the military member's covered active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the military member's covered active duty service. This information need only be provided once to the employer, unless a need for qualifying exigency leave arises out of a different call to covered active duty status of the same military member or the call to covered active duty status of a different military member. The Department proposes to delete the phrase ''in support of a contingency operation'' from current § 825.309(a) to reflect the expansion of qualifying exigency leave to family of the Regular Armed Forces. As discussed in § 825.126, the contingency operation requirement does not apply to members of the Regular Armed Forces.

As previously discussed, the FY 2010 NDAA amended the qualifying exigency provisions to require that both members of the Reserve components and members of the Regular Armed Forces be deployed to a foreign country in order for their service to be considered covered active duty entitling their family members to qualifying exigency leave. It is the Department's understanding that the military member's active duty orders will specify the location of the deployment and will provide sufficient information to establish that the duty is, in fact, covered active duty. Both current and proposed § 825.309(a) permit an employee to use either a copy of the military member's active duty orders or ''other documentation issued by the military'' to establish that the military member is on covered active duty or call to covered active duty status. The Department has received information from employees and employers indicating that family members have experienced difficulty obtaining copies of active duty orders or that the available documentation is insufficient to comply with current certification requirements. The Department specifically seeks feedback from the public on whether active duty orders of members of the Regular and Reserve components of the Armed Forces contain sufficient information to determine that the call to covered active duty involves deployment to a foreign country (and, in the case of the Reserve components that the member is being called up in support of a contingency operation), and, if not, what other documentation would meet the certification requirements. The Department also seeks comment on whether employees have experienced difficulty in obtaining copies of active duty orders or other military documents establishing their family member's covered service, and whether employers have experienced difficulty in confirming covered service.

As with other FMLA certifications, the certification process for qualifying exigency leave is optional for the employer. Accordingly, the proposal revises the regulatory language at § 825.309(a) to make it clear that new active duty orders or documentation do not automatically need to be provided; rather new active duty orders or documentation need only be provided upon request by the employer. The proposed change is consistent with the general certification process, which provides that an employer may require certification upon an employee request for qualifying exigency leave.

Current § 825.309(b) addresses information that may be required to support a request for qualifying exigency leave. Consistent with the proposed expansion of Rest and Recuperation qualifying exigency leave to be equivalent to the period of time the military member has for such leave, up to 15 days, the Department believes that it is appropriate for the employee to provide a copy of the military member's Rest and Recuperation orders in order to determine the specific leave period available. The Department therefore proposes a new § 825.309(b)(6) to require that certification of qualifying exigency leave for Rest and Recuperation include a copy of the members Rest and Recuperation leave orders, or other documentation issued by the military, and the dates of the leave. No other change is proposed to § 825.309(b).

Current § 825.126(c) identifies an optional-use Form WH–384 which may be used in requesting qualifying exigency leave and states that another form containing the same basic information may be used by an employer as long as no information beyond that specified in this section is required. As discussed above, the Department proposes to delete the optional-use forms from the Appendices to part 825. Accordingly, the Department proposes to delete the reference in current § 825.309(c) to Appendix H and proposes to add language explaining that Form WH–384 may be obtained from local Wage and

Hour offices or the Wage and Hour Web site. No other changes are proposed for § 825.309(c).

Current § 825.309(d) indicates that where a complete and sufficient certification is submitted in support of a request for leave, an employer may not request additional information from an employee. Where the qualifying exigency involves a third party, employers may contact the individual or entity for purposes of verifying the meeting or appointment and the nature of the meeting. The employee's permission is not required to conduct such verification, but the employer may not request additional information. Employers may also contact the appropriate unit of the DOD to verify that the military member is on active duty or call to active duty status; no additional information may be requested and the employee's permission is not required for such verification. The Department solicits information on how this provision has been working for employers and employees. The Department would like to know whether any privacy issues have arisen for employees, or whether any employees have been denied qualifying exigency leave because their employers have been unable to verify their leave requests. The Department also seeks information on whether employers have encountered any difficulties in making third party verifications, and if so, why and whether they have denied an employee leave as a result.

5. Section 825.310 Certification for Leave Taken To Care for a Covered Servicemember (Military Caregiver Leave)

Section 825.310 sets forth the certification process and the elements of a complete certification for military caregiver leave. Current § 825.310(a) permits an employer to require that a request for leave to care for a covered servicemember with a serious injury or illness be supported by a certification issued by an authorized health care provider, defined as: (1) A DOD health care provider; (2) a VA health care provider; (3) a DOD TRICARE network authorized private health care provider; or (4) a DOD non-network TRICARE authorized private health care provider. Thus, current paragraph (a) limits the type of health care providers who may complete a medical certification for military caregiver leave for current members of the military.

Proposed paragraph § 825.310(a)(5) adds health care providers, as defined by regulation in § 825.125, as a fifth component to the definition of an authorized health care provider from whom medical certification can be obtained for a serious injury or illness. The Department understands that in some circumstances, for example when seeking treatment for a mental health condition, some current servicemembers may wish to seek care from a health care provider unaffiliated with DOD. The Department believes that a family member of a current servicemember who is seeking treatment outside of the military's network for an injury or illness that was incurred or aggravated in the line duty on active duty should be eligible for FMLA leave under this provision. As such, the Department no longer believes that it is appropriate to limit a current servicemember's selection of health care provider more than it is limited for an individual seeking FMLA leave for a serious health condition. The expansion of authorized health care providers will apply equally to covered servicemembers who are covered veterans. The Department understands that veterans may use private health care providers rather than DOD, VA, TRICARE network health care providers, and some veterans may no longer be entitled to seek care through DOD or VA affiliated health care providers. Veterans may also be covered by the private health care plans of a spouse or parent and may utilize the services of private health care providers through these plans. Whether it is because there is no VA center in the area or due to other circumstances, the Department believes that families of veterans should be able to rely upon the determination of the veteran's own private health care provider, who otherwise meets the definition of an FMLA health care provider at § 825.125, in determining if the treated condition is a qualifying serious injury or illness. The Department also believes that expanding the pool of health care providers will avoid increasing the administrative burdens on the VA and DOD. The Department invites comment on the proposal to allow any FMLA health care provider as defined in § 825.125 to certify a serious injury or illness for military caregiver leave.

While the Department believes that it is appropriate to include as authorized health care providers under this section health care providers as defined in § 825.125, the Department is nonetheless concerned that private health care providers will not have the specialized information available to DOD, VA, and TRICARE network health care providers that is necessary to make several of the military-related determinations, and may need to obtain that information from DOD or VA in order to make a determination of whether the condition is related to the covered servicemember's service and/or whether the condition meets the definition of serious injury or illness. The Department seeks comments related to the available processes for a private health care provider to obtain information related to whether an injury or illness was incurred in the line of duty while on active duty or whether the covered servicemember's injury or illness existed before beginning service and was aggravated by service in the line of duty while on active duty. The Department also seeks comments on whether a covered servicemember will have a copy of medical records from his or her military service, or would the covered servicemember, or family member, be able to access medical records or other documentation that would support the determination that an injury or illness was incurred in the line of duty while on active duty, and the types of documentation that may be available to the covered servicemember or family member. Specific to veterans, the Department seeks comment on whether a veteran or family member has access to documentation of a VASRD disability rating.

Current § 825.310(b) sets forth the information an employer may request from the health care provider in order to support the employee's request for leave. The Department proposes to modify paragraphs (b)(1)–(4), as discussed below. The Department proposes no other changes to § 825.310(b). Current § 825.310(b) permits an authorized health care provider who is unable to make certain military determinations to rely on determinations from an authorized DOD representative. In light of the extension of military caregiver leave to covered veterans, proposed § 825.310(b) indicates that an authorized health care provider may rely on military-related determinations from an authorized DOD representative or an authorized VA representative. Current § 825.310(b)(1) allows an employer to request certain information from the health care provider. Consistent with the Department's proposal to allow covered servicemembers to utilize any health care provider as defined in § 825.125, the Department proposes to add a new provision (b)(1)(v) clarifying that the medical certification may be provided by a health care provider as defined by § 825.125.

Current paragraph (b)(2) allows an employer to request information that specifies whether the covered servicemember's injury or illness was

incurred in the line of duty while on active duty. The Department proposes to add language to this paragraph to allow an employer to obtain information that specifies whether the covered servicemember's injury or illness existed before beginning service and was aggravated by service in the line of duty while on active duty. The proposed language incorporates the FY 2010 NDAA statutory amendment to the definition of serious injury or illness which provides that a serious injury or illness for both current members of the military and covered veterans includes an injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces. The Department seeks comment on what processes are or may be used to determine that an injury or illness existed prior to active duty service and was aggravated by service in the line of duty on active duty. Comment is also sought on the basis a non-DOD or non-VA health care provider would determine that an injury or illness is a condition that existed before the military member's service and was aggravated in the line of duty on active duty.

Current § 825.310(b)(3) allows an employer to request the approximate date on which the serious injury or illness commenced and its probable duration. In light of the statutory amendments to the definition of serious injury or illness, proposed § 825.310(b)(3) allows an employer to request the approximate date on which the serious injury or illness commenced or was aggravated and its probable duration.

Current § 825.310(b)(4) allows an employer to request a statement of appropriate medical facts regarding the covered servicemember's health condition for which leave is requested and specifies what medical facts must be included in a certification in order to support the need for leave. The Department proposes to move the description of what medical facts must be included in the certification for a serious injury or illness of a current member of the military from current § 825.310(b)(4) to proposed § 825.310(b)(4)(i). Proposed § 825.310(b)(4)(i) retains the same requirements as in current paragraph (b)(4) that a sufficient certification for a serious injury or illness of a current member of the military must include information on whether the injury or illness may render the current servicemember unfit to perform the duties of the servicemember's office, grade, rank, or rating and whether the servicemember is receiving medical treatment, recuperation, or therapy. The Department further proposes to describe in § 825.310(b)(4)(ii) what medical facts must be included in the certification for an injury or illness of a covered veteran. Proposed § 825.310(b)(4)(ii) states that a sufficient certification for a serious injury or illness of a covered veteran must include information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces; involves a physical or mental condition for which the veteran has received a VASRD rating of 50 percent or higher, and that such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or, a physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a service-connected disability or disabilities, or would do so absent treatment.

As noted earlier, the Department is considering adding enrollment into VA's Program of Comprehensive Assistance for Family Caregivers as another possible definition for establishing a qualifying serious injury or illness for a covered veteran. The Department seeks comments on whether the medical documentation required for enrollment in the VA's Program for Comprehensive Assistance for Family Caregivers provides sufficient medical facts to support the need for FMLA leave. The Department notes that under the current proposed definition of serious injury or illness of a veteran, medical documentation prepared in connection with the VA's Program of Comprehensive Assistance for Family Caregivers may be submitted as part of the FMLA certification process under proposed § 825.127(c)(2)(ii) and (c)(2)(iii). To the extent that additional information is necessary to establish a complete and sufficient FMLA certification (*i.e.,* information showing the relationship of the employee to the covered servicemember for whom the employee is requesting leave to care), the employee seeking leave would be responsible for providing the employer with the additional information.

Current § 825.310(c) outlines the information that employers may require from employees as part of the certification. No change is proposed to current § 825.310(c)(1)–(5). The Department proposes to add a new paragraph (c)(6) and renumber current paragraph (c)(6) as (c)(7). Proposed paragraph (c)(6) permits an employer to require that the employee or covered servicemember indicate whether the member is a veteran, the date of separation, and whether the separation was other than dishonorable. It also permits the employer to request documentation confirming this information, and permits the employee to provide a copy of the veteran's DD Form 214 or other proof of veteran status to satisfy such documentation requirement.

Current § 825.310(d) identifies an optional-use form that may be used to provide certification for military caregiver leave. As discussed above, the Department proposes to delete the forms from the Appendices and therefore proposes in paragraph (d) to delete the reference to Appendix H and instead to insert language stating that the applicable form may be obtained either from a local WHD office or the WHD Web site. The Department intends to amend current form WH–385 to reflect that a health care provider as defined in § 825.125 may certify a serious injury or illness for a current servicemember. The Department is also considering the development of a new form to capture the above identified information for military caregiver leave for a covered veteran. The Department seeks comments on whether it will be less confusing to develop two forms to use for military caregiver certification or whether adapting the current WH–385 would be preferable.

Current § 825.310(d) also provides that an employer may seek authentication and/or clarification of the certification for military caregiver leave; however, second and third opinions are not permitted. In the 2008 final rule, the Department reasoned that the statutory standard for determining whether a military member has a serious injury or illness is dependent on several determinations which can only be made by the military. Therefore, it would be inappropriate to permit second and third opinions regarding those determinations. 73 FR 68029. With the proposed change to allow families of covered servicemembers to rely upon the determination of health care providers unaffiliated with DOD, VA, or TRICARE, the certification process, when done by a private health care provider that is not one of the types identified in § 825.310(a)(1)–(4), is more akin to the certification process for the serious health condition of civilian family members. Therefore, the Department believes that in such situations there is no basis to prohibit employers from obtaining second and third opinions. Consequently, the

Department proposes in § 825.310(d) to state that second and third opinions are not permitted when the certification has been completed by one of the types of health care providers identified in § 825.310(a)(1)–(4), but second and third opinions are permitted when the certification has been completed by a health care provider that is not one of the types identified in § 825.310(a)(1)–(4). The Department seeks comment on the proposal to permit second and third opinions on military caregiver leave certifications that are completed by health care practitioners who are not affiliated with the military or VA.

No changes are proposed for § 825.310(e), which addresses the use of ''invitational travel orders'' (ITO) or ''invitational travel authorizations'' (ITA) issued for medical purposes, in lieu of a certification form, other than to update internal references. However, the Department seeks comment on the effectiveness of the substitution of ITOs and ITAs in support of a need for military caregiver leave.

Current § 825.310(f) states that it is the employee's responsibility to provide the employer with a complete and sufficient certification and describes the consequences of failing to do so. The Department proposes to add text that clarifies this requirement, providing that ''an employee may not be held liable for administrative delays in the issuance of military documents, despite the employee's diligent, good-faith efforts to obtain such documents.'' While current § 825.305(b) already provides that employees who are unable to provide requested FMLA certification (including certification for military caregiver leave) within 15 days despite their diligent, good faith efforts must be provided with additional time, the Department believes that it is important to reiterate this principle in § 825.310(f). As discussed in the preamble to the 2008 final rule, the Department acknowledges concerns regarding timely receipt of military documentation and hopes to clarify that employees may not be held responsible for administrative delays in the issuance of military documents where a good faith attempt is made by the employee to obtain such documents. 73 FR 68011.

B. Revisions To Implement the AFCTCA Amendments

1. Section 825.110 Eligible Employee

Current § 825.110 sets forth the eligibility standards an employee must meet in order to take FMLA leave. To be eligible, an employee must have been employed by the employer for at least 12 months, must have been employed for at least 1,250 hours of service in the 12-month period immediately preceding the commencement of the leave, and must be employed at a worksite where 50 or more employees are employed by the employer within 75 miles. Whether an employee has worked the required 1,250 hours of service is based on FLSA hours-worked principles contained in 29 CFR 785. The Department proposes revisions to § 825.110(a), (c), and (d) to reflect the AFCTCA's expanded definition of the ''hours of service'' requirement for airline flight crew employees. No changes are proposed to § 825.110(b) and (e).

Section 825.110(a) sets forth the general employee eligibility requirements. In § 825.110(a)(2) the Department proposes to add a reference to proposed paragraph § 825.110(c)(2), which sets forth the hours of service requirement for airline flight crew employees. No other changes are proposed in § 825.110(a).

Current § 825.110(b)(2)(i) concerns determining an employee's eligibility when there is a break in service occasioned by the fulfillment of the employee's National Guard or Reserve military service. The Department proposes to modify the language in the first sentence to reference the Uniformed Services Employment and Reemployment Rights Act (USERRA) and to clarify that the protections afforded by USERRA extend to all military members (active duty and reserve) returning from USERRA-qualifying military service. Current § 825.110(c)(2) provides rules pursuant to USERRA for crediting an employee returning from a National Guard or Reserve obligation with the hours of service that would have been performed but for the military service when evaluating whether the ''hours of service'' eligibility requirement has been met. The Department proposes to renumber current paragraph (c)(2) as paragraph (c)(3) and to spell out the title of USERRA, which is currently referred to in this section by the acronym only. In addition, the Department proposes to modify the language in the first sentence of this paragraph in recognition that USERRA rights may extend to certain employees returning to civilian employment from service in the Regular Armed Forces. The Department also proposes to modify this paragraph to refer more generally to the hours of service requirement.

The AFCTCA requires employers to calculate hours of service for eligibility in a different manner for airline flight crew employees. The Department proposes to separately define the hours of service eligibility requirement for these employees in proposed § 825.110(c)(2) and (c)(3). The Department notes that the hours of service requirement will continue to be determined based on ''hours worked'' as defined under the FLSA for all employees other than airline flight crew employees. Proposed paragraph § 825.110(c)(2) states the AFCTCA requirement that the hours of service criteria will be met if during the previous 12-month period the airline flight crew employee has worked or been paid for not less than 60 percent of the applicable monthly guarantee and has worked or been paid for not less than 504 hours (not including personal commute time or time spent on vacation leave or sick or medical leave).

Proposed paragraph § 825.110(c)(2)(i) states the statutory definition of applicable monthly guarantee for airline flight crew employees on reserve and non-reserve status. The Department proposes to refer to airline flight crew employees who are not on reserve status as ''line holders'', which the Department understands to reflect industry terminology. The applicable monthly guarantee is determined by the employer's policies or collective bargaining agreement and differs depending on whether the airline flight crew employee is a line holder or on reserve status and on the employee's job classification (*i.e.,* pilot, co-pilot, flight attendant, or flight engineer). For airline employees who are on reserve status, the applicable monthly guarantee means the number of hours for which an employer has agreed to pay the employee for any given month. For line holders, the applicable monthly guarantee is the minimum number of hours for which an employer has agreed to schedule such employee for any given month. It is the Department's understanding that the schedule for line holders is based on duty hours, and that duty hours include the *flight* or *block* hours as determined by the Federal Aviation Administration (FAA) as well as additional time before and after the flight as determined by employer policy or applicable collective bargaining agreement. The Department seeks comments on whether this is an accurate interpretation of what comprises the line holders' scheduled hours, or whether some other basis such as flight or block hours would be more appropriate for this calculation.

In § 825.110(c)(2)(ii) the Department proposes to base the number of hours that an airline flight crew employee has worked on the employee's duty hours during the previous 12-month period. While duty hours may not always reflect all hours that would be considered

hours worked under the FLSA, it is the Department's understanding that duty hours are closely tracked in a similar manner by all employers in the industry. Therefore, the Department believes that duty hours provide the most accurate and uniform basis for making eligibility determinations for hours of service for airline flight crew employees. Regarding the calculation of the number of hours that an airline flight crew employee has been paid, it is the Department's understanding that all airline flight crew employees are generally paid on an hourly basis, and that these hours are routinely tracked by each airline. The hours an airline flight crew employee has been paid is the number of hours for which an employee received wages during the previous 12-month period. As required by the AFCTCA, personal commute time, vacation, and medical or sick leave do not count towards the hours worked or paid calculation. The Department notes that airline flight crew employees are eligible if they have either the required number of ''hours worked'' or ''hours paid''. The Department invites comments on whether these calculation methods for hours worked and hours paid are the most appropriate bases for determining whether an airline flight crew employee has worked or been paid for 504 hours during the previous 12-month period.

The Department proposes to renumber current paragraph § 825.110(c)(3), which explains an employer's burden when it does not maintain accurate records of hours worked for an employee, as new § 825.110(c)(4), and to add language clarifying the application of this rule to airline flight crew employees.

Finally, the Department proposes to replace the phrase ''worked for the employer for at least 1,250 hours'' in the first sentence of current § 825.110(d) with the more general ''met the hours of service requirement'', to provide uniformity with the rest of the section in reflecting the AFCTCA requirements. The Department also proposes to replace the general reference to ''eligibility requirements'' in the second sentence of this paragraph with a specific reference to the ''12-month eligibility requirement'' to clarify the application of this principle.

The Department seeks comments on all aspects of the application of the AFCTCA eligibility provisions, particularly on the proposal to interpret the requirement of 504 hours worked to be 504 hours of duty time, as well as the Department's understanding that scheduled hours for line holders encompasses duty hours. The Department recognizes that the airline industry has unique timekeeping practices and it is the Department's intent to utilize existing industry records to make FMLA eligibility determinations.

2. Section 825.205 Increments of FMLA Leave for Intermittent or Reduced Schedule Leave

Section 825.205 of the current regulations explains how to count increments of leave in cases of intermittent or reduced schedule leave. The Department proposes several changes to this section. The changes implement the AFCTCA provisions and address how FMLA leave usage is counted for all employees.

Current § 825.205(a) defines the minimum increment of FMLA leave to be used when taken intermittently or on a reduced schedule as an increment no greater than the shortest period of time that the employer uses to account for other forms of leave, provided that it is not greater than one hour. The Department proposes to add language to paragraph (a)(1) stating that an employer may not require an employee to take more leave than is necessary to address the circumstances that precipitated the need for leave. This concept was included in § 825.203(d) of the 1995 final rule. The Department believes it is appropriate to reinsert it into the regulations to emphasize the statutory requirement that an employee's FMLA leave entitlement not be reduced beyond the amount of leave actually taken in accounting for leave taken on an intermittent or reduced schedule basis. 29 U.S.C. 2612(b)(1). The proposed regulatory text makes clear that this principle is subject to the increment of leave rule set forth in this paragraph as well as to the physical impossibility rule in paragraph (a)(2) and the special rules for intermittent leave for school employees in §§ 825.601 and 825.602. As explained in the 2008 final rule, the other situation in which an employee may use more FMLA leave than necessary to address the circumstances requiring leave is when the employee elects to substitute paid leave and must use a larger amount of leave in order to satisfy the employer's paid leave policy. In such instances, the entire period of leave taken is FMLA-protected and counts against the FMLA entitlement. 73 FR 67981. While an employer can require an employee to utilize a larger amount of FMLA leave than necessitated by the FMLA condition if the employee wishes to substitute paid leave, the employee always has the option to take unpaid FMLA leave in the smallest increment of leave used by the employer.

The Department also proposes to add to paragraph (a)(1) language from the preamble to the 2008 final rule that further clarifies two important aspects of the calculation of FMLA leave. First, the Department proposes to add an example to illustrate the principal that where an employer uses different increments to account for different types of leave (*e.g.,* sick leave in one-half hour increments and annual leave in increments of one hour), the employer must use the smallest of the increments to account for FMLA leave usage. 73 FR 67976. Additionally, the Department proposes to clarify in the regulatory text that FMLA leave may only be counted against an employee's FMLA entitlement for leave taken and not for time that is worked for the employer. *Id.* Accordingly, where an employer chooses to waive its increment of leave policy in order to return an employee to work—for example where an employee arrives a half hour late to work due to an FMLA-qualifying condition and the employer waives its normal one hour increment of leave and puts the employee to work immediately—only the amount of leave actually taken by the employee may be counted against the FMLA entitlement. The Department believes these clarifications in the regulatory text will aid employers and employees in understanding the application and counting of FMLA leave usage.

Current § 825.205(a)(1) also permits employers to utilize different increments of FMLA leave at different times of the day or shift under certain circumstances. Under this provision, for example, if an employer utilizes a larger increment of leave at the beginning or the end of a shift an employee needing FMLA leave during those periods may be required to take the leave in the size of the smallest increment of leave permitted at that particular time. The Department's enforcement experience indicates some confusion regarding this provision including some employers who have interpreted this language to permit the use of a larger increment of FMLA leave at certain points in a shift than the increment used for other forms of leave in the same time period. Consequently, the Department proposes to remove the language allowing for varying increments at different times of the day or shift in favor of the more general principle of using the employer's shortest increment of any type of leave at any time. The Department requests comment on the proposal to remove this language from the regulations.

Current § 825.205(a)(2) sets forth the physical impossibility provision which provides that where it is physically impossible for an employee to commence or end work mid-way through a shift, the entire period that the employee is forced to be absent is counted against the employee's FMLA leave entitlement. The Department has reviewed this position in connection with the AFCTCA because of the impact of the physical impossibility provision on the airline industry. As discussed in the preamble to the 2008 final rule, the physical impossibility provision is intended to apply only in very narrow circumstances. 73 FR 67977. The Department is concerned, however, that the provision may be being applied more broadly than intended. Accordingly, the Department proposes adding language at paragraph (a)(2) emphasizing that it is an employer's responsibility to restore an employee to his or her same or equivalent position at the end of any FMLA leave as soon as possible. The proposed language further emphasizes the Department's intent that the physical impossibility provision be applied in only the most limited circumstances and only where it is, in fact, physically impossible to allow the employee to leave his or her shift early or to restore the employee to his or her same position or to an equivalent position at the time the employee no longer needs FMLA leave. Thus, for example, if after three hours of FMLA leave use it was physically possible to restore a flight crew employee to another flight, the employer would be required to do so. If, however, no other flight is available to which the employee could be assigned, or no other equivalent work is available, restoration could be delayed and the employee's FMLA entitlement reduced for the entire period the employee is forced to be absent. The Department reiterates that employers have an obligation not to discriminate between employees taking FMLA leave and employees taking other forms of leave in restoring employees or offering alternative work. 73 FR 679678. Alternatively, the Department is considering deleting the physical impossibility provision in its entirety. The 2008 final rule explained that the Department intended the provision to protect employees from discipline when a short FMLA-protected absence resulted in a much longer absence because of the unique nature of the worksite. 73 FR 67977. However, the Department is concerned that this exception may be misused, delaying restoration in instances where restoration to an equivalent position is possible or where restoration to the same position may be possible but inconvenient to the employer. The Department seeks comments on whether the physical impossibility provision has indeed protected employees from inappropriate discipline, or if it has been misused to unduly extend employees' FMLA leave and diminish their FMLA entitlement, and whether it should be retained in the regulations.

Current § 825.205(b) addresses the rules concerning the calculation of leave usage when leave is taken on an intermittent or reduced leave schedule (calculation of leave for airline flight crew employees is separately addressed in § 825.205(d)). The Department proposes only clarifying changes to this paragraph. The Department proposes to include in the regulatory text language from the 2008 final rule preamble to reinforce the requirement that the employee's total available entitlement is 12 workweeks (or 26 workweeks in the case of military caregiver leave), that FMLA leave does not accrue at any particular hourly rate, and that the specific number of hours contained in the workweek is dependent upon the hours the employee would have worked but for the taking of the FMLA leave. 73 FR 67978. The Department also proposes minor edits making uniform the references to fractions contained in this paragraph.

Current § 825.205(c) addresses when overtime hours that are not worked may be counted as FMLA leave. The Department proposes to change the term ''serious health condition'' in the last sentence in paragraph (c) to ''FMLA qualifying reason.'' This editorial change is consistent with the language used in the first sentence of the paragraph and more accurately reflects that overtime hours missed by an employee may be due to any FMLA-qualifying reason and are not limited to a serious health condition.

Proposed § 825.205 (d)(1) provides the method for calculating leave usage for airline flight crew employees who are line holders and is based on principles established for the calculation of leave for all employees found in paragraph (b)(1) of this section. For line holders, the number of duty hours scheduled will be used in determining the employee's workweek for purposes of calculating FMLA leave usage. Duty hours scheduled means the hours that the individual employee is scheduled to work in the workweek in which FMLA leave is needed. It is the Department's understanding that the line or block awarded to the employee would readily yield the duty hours scheduled for any given week. Further, it is the Department's understanding that duty hours include the flight or block hours as determined by the FAA, as well as the additional time before and after the flight encompassing pre- and post-flight duties, as determined by employer policy or applicable collective bargaining agreement. The Department believes the employee's duty time best represents the time spent on the job and provides an accurate characterization of the time needing job protection in the event FMLA leave is needed by the employee.

Proposed paragraph (d)(2) of this section provides the method for calculating leave usage for airline flight crew employees on reserve status. The Department proposes to base the leave entitlement and calculation of the employee's workweek on an average of the greater of the applicable monthly guarantee or actual duty hours worked over the prior 12 months. Under this proposal, the employee's average workweek would be calculated by adding the greater of the applicable monthly guarantee (the number of hours for which an employer has agreed to pay the employee for any given month) or actual duty hours worked in each of the previous 12 months and dividing by 52 weeks per year. This average workweek would be the basis for FMLA leave usage for the 12-month FMLA leave year. For example, if a reserve flight attendant has worked or been paid an average of 20 hours per week over the prior 12 months, the employee would be entitled to 12 workweeks of 20-hours for FMLA leave (or 26 workweeks in the case of leave to care for a covered servicemember). If the flight attendant needs four hours of FMLA leave in one workweek, the employee would use one-fifth (⅕) of a workweek (4 hours ÷ 20 hours/workweek). The principles established for the calculation of leave for all employees found in paragraph (b)(1) of this section continues to apply to these airline flight crew employees. Due to the Department's understanding of the variation in scheduling and actual hours worked by reserve airline flight crew employees and variation during different times of the year, the Department proposes this averaging method for calculating FMLA leave usage. The Department acknowledges that, as with any averaging method, actual workweeks will vary in any given situation.

In developing a proposed method to calculate FMLA-leave usage for airline flight crew employees on reserve status, the Department considered a methodology based on FLSA principles of ''hours worked,'' as is used for

employees other than airline flight crew employees. However, airline flight crew employees are not paid strictly on a FLSA ''hours worked'' basis but rather based in part on the applicable monthly guarantee. Airline flight crew employees on reserve status may work all, few, or none of the hours for which they are paid in a given month. Thus, after considering applying the FLSA ''hours worked'' method of leave calculation to airline flight crew employees, the Department concluded that the unique way in which airline flight crew employees are scheduled and paid made this methodology impracticable. Through consultations with airline employers and employee representatives, the Department understands that airlines are already tracking and recording airline flight crew employees' hours in a number of ways pursuant to FAA regulations, including flight hours, duty hours, and mandatory rest periods. *See* 14 CFR pt. 91. The Department believes that imposing a FLSA ''hours worked'' methodology on the airline industry and thus mandating yet another recordkeeping system would be unduly burdensome and costly for employers, as well as unnecessarily confusing for employees.

Rather, the Department believes the method of averaging in proposed paragraph (d)(2) is better suited to the variable scheduling of reserve airline flight crew members. Additionally, the method proposed is consistent with current § 825.205(b)(3), which provides that, where an employee's schedule varies from week to week to such an extent the employer is unable to determine the hours the employee would have worked but for the taking of FMLA leave, the employer has the option to establish a leave entitlement by using the weekly average of the hours scheduled over the 12 months prior to the beginning of the leave period. The Department believes proposed paragraph (d)(2) is consistent with current FMLA calculation methods, best reflects Congressional intent, and will provide access to FMLA leave for the largest number of flight crew employees without requiring dramatic changes to existing industry systems.

The Department also understands that some line holders may also request additional work in reserve status. Where an employee is both a line holder and on reserve status, the Department proposes that the leave calculation should be made using the method set forth for reserve airline flight crew employees, as this method is flexible enough to encompass both the applicable monthly guarantee and duty hours. The Department requests comment on industry practice in this area and application of the FMLA regulations to such a scenario. The Department also seeks comment on the proposed calculation of leave methods for both line holders and airline flight crew employees on reserve status and welcomes suggestions for alternative methods that equitably reflect the employee's total normally scheduled hours and actual FMLA leave taken.

3. Section 825.500 Recordkeeping Requirements

Current § 825.500 details the recordkeeping requirements under the FMLA. The Department proposes to add a new sentence at the end of paragraph (g) setting forth the employer's obligation to comply with the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA). To the extent that records and documents created for FMLA purposes contain ''family medical history'' or ''genetic information'' as defined in the GINA, employers must maintain such records in accordance with the confidentiality requirements of Title II of GINA. GINA permits genetic information, including family medical history, obtained by the employer in FMLA records and documents to be disclosed consistent with the requirements of the FMLA.

The Department proposes to define in a new paragraph (h) the statutory requirement that employers of airline flight crew employees maintain on file with the Secretary certain records. Consistent with other recordkeeping requirements, proposed paragraph (h) makes clear that records are to be maintained by the employer by making, keeping, and preserving records in accordance with the requirements already delineated in § 825.500, with no actual submission to the Secretary unless requested.

Additionally, proposed paragraph (h)(1) outlines additional records that are required to be kept specific to employers of airline flight crew employees. These additional records include any records or documents that specify the applicable monthly guarantee for each type of employee to whom the guarantee applies, including any relevant collective bargaining agreements or employer policy documents that establish the applicable monthly guarantee; as well as records of hours scheduled, in order to be able to apply the leave calculation principles contained in proposed § 825.205(d).

C. Proposed Revisions to Forms, Appendices, and Definitions

1. Section 825.300 Employee and Employer Rights and Obligations Under the Act

As previously discussed, the Department is proposing to delete the Appendices to part 825 and to provide copies of the optional use forms and the poster through local Wage and Hour Offices and the Wage and Hour Web site. References to the Appendices have been deleted from the following sections: § 825.300 (Employer notice requirements), § 825.306 (Content of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member), § 825.309 (Certification for leave taken because of a qualifying exigency), § 825.310 (Certification for leave taken to care for a covered servicemember (military caregiver leave)), and § 825.800 (Definitions). The Department also proposes minor edits to § 825.300 to reflect provisions of the FY 2010 NDAA and AFCTCA.

2. Section 825.800 Definitions

The current § 825.800 contains the definitions of significant terms, phrases, and acronyms used in the regulations. The Department proposes to move this section of the regulations to § 825.102. This reorganization is intended to enhance the utility of the regulations by defining terms before they are used and in advance of the substantive provisions. Moving the definitions section to the beginning of the regulations is consistent with other regulations implementing statutes administered by the WHD.

The Department proposes to make changes to definitions and regulatory references in this section to maintain consistency with the Department's proposed changes to the regulatory text. Specifically, the terms modified are *covered servicemember, eligible employee, serious injury or illness,* and *son or daughter on covered active duty or an impending call or order to covered active duty.* Only the references were updated to *contingency operation, next of kin of a covered servicemember, outpatient status, parent of a covered servicemember,* and *son or daughter of a covered servicemember.* In addition, the Department proposes terms be added or removed to reflect the regulatory changes made to incorporate the FY 2010 NDAA and AFCTCA amendments to the regulations. The terms added are *airline flight crew employee, covered active duty or call to covered active duty status, applicable*

monthly guarantee, line holder, and *covered veteran.* The terms removed are *active duty or call to active duty status* and *covered military member.*

The Department also proposes to add terms previously not listed in this section but used in the current regulations and unchanged by this NPRM as an aid and service to the reader. These terms are *ITO or ITA, key employee, military caregiver leave, reserve components of the Armed Forces,* and *TRICARE.*

IV. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., and its attendant regulations, 5 CFR part 1320, the Department seeks to minimize the paperwork burden for individuals, small businesses, educational and non-profit institutions, Federal contractors, State, local, and tribal governments, and other persons resulting from the collection of information by or for the agency. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. *See* 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8. Persons are not required to respond to the information collection requirements as contained in this proposal unless and until they are approved by the Office of Management and Budget (OMB) under the PRA at the final rule stage.

This paperwork burden analysis estimates the burdens for the proposed regulations as drafted. The proposed regulations, as they relate to the PRA, implement amendments to the military leave provisions made by the FY 2010 NDAA, which extends the availability of FMLA leave for qualifying exigencies to employee-family members of members of the Regular Armed Forces and defines the deployments covered by such leave, and extends FMLA military caregiver leave to employee-family members of certain veterans with a serious injury or illness and expands the provision of such leave to cover serious injuries or illnesses that existed prior to a covered servicemember's active duty and were aggravated in the line of duty while on active duty. The proposed regulations also implement the AFCTCA, which establishes new eligibility requirements for airline flight crew members and flight attendants.

As will be more fully explained later, many of the estimates in the analysis of the paperwork requirements derive from data developed for the Preliminary Regulatory Impact Analysis (PRIA) under Executive Orders 13563 and 12866. However, the specific needs that the PRA analysis and PRIA are intended to meet often require that the data undergo a different analysis to estimate burdens imposed by the paperwork requirements from the analysis used in estimating the effect the regulations will have on the economy. In addition for certain sections, a range of values is provided in the PRIA; the PRA uses the midpoint of those ranges. Consequently, the differing treatment that must be undertaken in the PRA analysis and the PRIA of the proposed regulatory changes may result in different results. For example, the PRA analysis measures the additional burden of the information collection on those who are providing information due to the proposed regulatory changes; however, the PRIA measures the incremental changes expected to result in the broader economy due to the proposed regulatory changes. Thus, this PRA analysis will calculate the additional paperwork burden in relation to the existing FMLA information collection burden arising from this rule. Conversely, the regulatory definition for collection of information for PRA purposes specifically excludes the public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public. 5 CFR 1320.3(c)(2). The PRIA, however, may need to consider the impact of any regulatory changes in such notifications provided by the government. Finally, the PRA definition of ''burden'' can exclude the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (*e.g.,* in compiling and maintaining business records) if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary. 5 CFR 1320.3(b)(2). The PRIA, however, must consider the economic impact of any changes in the proposed regulation.

Circumstances Necessitating Collection: The FMLA requires private sector employers of 50 or more employees and public agencies to provide up to 12 weeks of unpaid, job-protected leave during any 12-month period to eligible employees for certain family and medical reasons (*i.e.,* for the birth of a son or daughter and to care for the newborn child; for placement with the employee of a son or daughter for adoption or foster case; to care for the employee's spouse, son, daughter, or parent with a serious health condition; to care for the employee's own serious health condition that makes the employee unable to perform the functions of his or her job; and to address qualifying exigencies related to the military call up of a spouse, son, daughter, or parent), and to provide up to 26 weeks of unpaid, job-protected leave during a single 12-month period to eligible employees to provide military caregiver leave to a covered servicemember. FMLA section 404 requires the Secretary of Labor to prescribe such regulations as necessary to enforce this Act. 29 U.S.C. 2654. The proposed regulations, which primarily pertain to the expansion of the military family leave entitlements and the expansion of FMLA protections to airline flight crews, will create additional burdens on the following information collections.

A. *Notice to Employee of FMLA Eligibility and Rights and Responsibilities* [29 CFR 825.300(b) and (c)]. When an employee requests FMLA leave or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying condition, the employer must notify the employee within five business days of the employee's eligibility to take FMLA leave, or, alternatively, at least one reason why the employee is not eligible for FMLA leave (*e.g.,* applicable number of months the employee has been employed by the employer, the number of hours of service in the 12-month period, whether the employee is employed at a worksite where 50 employees are employed at or within 75 miles of that worksite.) At the same time that the employer provides eligibility notice, the employer must provide information detailing the specific responsibilities of the employee, including any additional requirements for qualifying for FMLA leave, and explain any consequences of a failure to meet these responsibilities. If the specific information provided by the notice changes, the employer must inform the employee of the change within five business days of receipt of the employee's first notice of the need for FMLA leave subsequent to such change.

B. *Designation Notice* [29 CFR 825.300(d)]. The employer is responsible in all circumstances for designating leave as FMLA-qualifying, and for giving notice of the designation to the employee. When the employer has enough information to determine whether the leave is being taken for an FMLA-qualifying reason, the employer must notify the employee whether the leave will be designated and will be counted as FMLA leave. Only one notice of designation is required for each FMLA-qualifying reason per

applicable 12-month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave or intermittent or reduced schedule leave.

C. *Medical Certification and Recertification* [29 CFR 825.100(d) and 825.305 through 825.308]. An employer may require that an employee's leave to care for the employee's seriously ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform one or more essential functions of the employee's position, be supported by a certification issued by the health care provider of the eligible employee or of the ill family member. The employer must provide notice of this requirement in writing. The employer may contact the employee's health care provider for purpose of authentication and clarification of the medical certification (whether initial certification or recertification) after the employer has given the employee an opportunity to cure any deficiencies. In addition, an employer must advise an employee whenever it finds a certification incomplete or insufficient and state in writing what additional information is necessary to make the certification complete and sufficient. An employer, at his or her own expense and subject to certain limitations, also may require an employee to obtain a second and third medical opinion. In addition, an employer may also request recertification under certain conditions. The employer must provide the employee at least 15 calendar days to provide the initial certification and any subsequent recertification. The employer must provide seven calendar days (unless not practicable under the particular circumstances despite the employee's good faith efforts) to cure any deficiency identified by the employer.

D. *Fitness-for-duty Medical Certification* [29 CFR 825.100(d) and 825.312]. As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, an employer may have a uniformly-applied policy or practice that requires all similarly-situated employees (*i.e.,* same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health care provider that the employee is able to resume work. The employee has the same obligations to participate and cooperate in providing a complete and sufficient certification to the employer in the fitness-for-duty certification process as in the initial certification process. An employer is permitted to require an employee to furnish a fitness-for-duty certificate every 30 days if an employee has used intermittent leave during that period and reasonable safety concerns exist concerning the employee's ability to perform his job.

E. *Qualifying Exigency Leave* [29 CFR 825.309]. Under the FY 2010 NDAA, qualifying exigency leave was expanded to include the members of the Regular Armed Forces along with members of the National Guard and Reserves, and to require that the deployment of both types of military members be to a foreign country. Section 825.309 establishes that an employer may require an employee to provide certification of the servicemember's covered active duty or call to covered active duty status. Pursuant to current § 825.309(a), the employee may provide a copy of the servicemember's active duty orders or other documentation issued by the military which indicates that the servicemember is on active duty or has been notified of an impending call or order to active duty and the dates of the servicemember's active duty service. Current section 825.309(b) establishes that when leave is taken for one of the qualified exigencies specified in § 825.126, an employer may require the eligible employee to provide certification that sets forth certain information. Current section 825.309(c) describes the optional use form developed by the Department for employees' use in obtaining certification that meets the FMLA's certification requirements. Current section 825.309(d) establishes the verification process for the certifications.

F. *Leave to Care for a Covered Servicemember* [29 CFR 825.310]. The FY 2010 NDAA expanded the definition of covered servicemember to include veterans, and permitted eligible employees to take leave to care for certain veterans with a qualifying serious injury or illness. It also permits leave to be taken for a covered servicemember whose previously existing condition was aggravated by service in the line of duty on active duty, and in the case of veterans, when the serious illness or injury manifested before or after the servicemember became a veteran. When an eligible employee requests FMLA leave to care for a covered servicemember with a serious injury or illness, the employer may require the employee to provide sufficient certification of the serious injury or illness issued by an authorized health care provider. Current section 825.310(a) permits an employer to require that certain necessary information support the request for leave and defines the health care providers who are authorized to provide such certification. Current section 825.310(b) and (c) set forth the information an employer may require from the authorized health care provider and the employee, respectively, in order to support the request for leave. Current section 825.310(d) describes the optional form developed by WHD for employees' use in obtaining certification that meets the FMLA's certification requirements. Current section 825.310(e) describes alternatives to the optional form that employers must accept from employees obtaining certifications in certain circumstances.

G. *Notice to Employees of Change of 12-Month Period for Determining FMLA Entitlement* [29 CFR 825.200(d)(1)]. An employer generally must choose a single uniform method from four options available under the regulations for determining the 12-month period in which the 12-week entitlement occurs for the purposes of FMLA leave. An employer wishing to change to another alternative is required to give at least 60 days notice to all employees.

H. *Key Employee Notification* [29 CFR 825.216(b), 825.217 through 825.219 and 825.300(c)(1)(v)]. An employer that believes that it may deny reinstatement to a key employee must give written notice to the employee at the time the employee gives notice of the need for FMLA leave (or when FMLA leave commences, if earlier) that he or she qualifies as a key employee. At the same time, the employer must also fully inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the employer should determine that substantial and grievous economic injury to the employer's operations would result if the employer were to reinstate the employee from FMLA leave. If the employer cannot immediately give such notice, because of the need to determine whether the employee is a key employee, the employer must give the notice as soon as practicable after receiving the employee's notice of a need for leave (or the commencement of leave, if earlier). If an employer fails to provide such timely notice, it loses its right to deny restoration, even if substantial and grievous economic injury will result from reinstatement.

As soon as an employer makes a good faith determination—based on the facts available—that substantial and grievous economic injury to its operations will result if a key employee who has given notice of the need for FMLA leave or is

using FMLA leave is reinstated, the employer must notify the employee in writing of its determination; that the employer cannot deny FMLA leave; and that the employer intends to deny restoration to employment on completion of the FMLA leave. The employer must serve this notice either in person or by certified mail. This notice must explain the basis for the employer's finding that substantial and grievous economic injury will result, and, if leave has commenced, must provide the employee a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return.

An employee may still request reinstatement at the end of the leave period, even if the employee did not return to work in response to the employer's notice. The employer must then determine whether there will be substantial and grievous economic injury from reinstatement, based on the facts at the time. If the employer determines that substantial and grievous economic injury will result from reinstating the employee, the employer must notify the employee in writing (in person or by certified mail) of the denial of restoration.

I. *Periodic Employee Status Reports* [825.300(c)(2) and 825.311]. An employer may require an employee to provide periodic reports regarding the employee's status and intent to return to work.

J. *Notice to Employee of Pending Cancellation of Health Benefits* [29 CFR 825.212(a)]. Unless an employer establishes a policy providing a longer grace period, an employer's obligation to maintain health insurance coverage ceases under FMLA if an employee's premium payment is more than 30 days late. In order to drop the coverage for an employee whose premium payment is late, the employer must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease and advise the employee that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date.

K. *Documenting Family Relationship* [29 CFR 825.122(j)]. Current section 825.122(j) permits an employer to require an employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a child's birth certificate, a court document, or a simple statement of the employee regarding family relationship. The employee is entitled to the return of any official document submitted for this purpose.

L. *Recordkeeping* [29 CFR 825.500]. The FMLA provides that covered employers shall make, keep, and preserve records pertaining to the FMLA in accordance with the recordkeeping requirements of Fair Labor Standards Act section 11(c), 29 U.S.C. 211(c), and regulations issued by the Secretary of Labor. 29 U.S.C. 2616. The FMLA provides that no employer or plan, fund, or program shall be required to submit books or records more than once during any 12-month period unless the Department has reasonable cause to believe a violation of the FMLA exists or is investigating a complaint. 29 U.S.C. 2616(c).

Current section 825.500(c) requires employers to maintain basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid; dates FMLA leave is taken by FMLA eligible employees (available from time records, requests for leave, etc., if so designated). Leave must be designated in records as FMLA leave; leave so designated may not include leave required under State law or an employer plan which is not also covered by FMLA; if FMLA leave is taken by eligible employees in increments or less than one full day, the hours of leave; copies of employee notices of leave furnished to the employer under FMLA, if in writing, and copies of all written notices given to employees as required under FMLA and these regulations; any documents (including written and electronic records) describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; premium payments of employee benefits; records of any dispute between the employer and an eligible employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and for the disagreement. Under the AFCTCA amendment, employers in the airline industry must also maintain records that specify the applicable monthly guarantee for each type of employee to whom the guarantee applies and must make these records available to the Secretary of Labor upon request.

Current section 825.500(d) requires covered employers with no eligible employees to maintain certain basic payroll and identifying employee data. Current section 825.500(e) requires covered employers that jointly employ workers with other employers to keep all the records required by the regulations with respect to any primary employees, and to keep certain basic payroll and identifying employee data with respect to any secondary employees.

Current section 825.500(f) provides that if FMLA-eligible employees are not subject to FLSA recordkeeping regulations for purposes of minimum wage or overtime compliance (*i.e.,* not covered by, or exempt from, FLSA), an employer need not keep a record of actual hours worked (as otherwise required under FLSA, 29 CFR 516.2(a)(7)), provided that: Eligibility for FMLA leave is presumed for any employee who has been employed for at least 12 months; and with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written record.

Current section 825.500(g) requires employers to maintain records and documents relating to any medical certification, recertification, or medical history of an employee or employee's family member, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files. Employers must also maintain such records in conformance with any applicable Americans with Disability Act (ADA) confidentiality requirements; except that: Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations; first aid and safety personnel may be informed, when appropriate, if the employee's physical or medical condition might require emergency treatment; and government officials investigating compliance with the FMLA, or other pertinent law, shall be provided relevant information upon request. To the extent that records and documents created for FMLA purposes contain ''family medical history'' or ''genetic information'' as defined in the Genetic Information Nondiscrimination Act of 2008 (GINA), employers must maintain such records in accordance with the confidentiality requirements of Title II of GINA. GINA permits genetic information, including family medical history, obtained by the employer in FMLA records and documents to be disclosed consistent with the requirements of the FMLA.

The FLSA record keeping requirements, contained in 29 CFR part 516, are currently approved under Office of Management and Budget (OMB) control number 1235–0018; consequently this information does not duplicate their burden, despite the fact that for the administrative ease of the regulated community this information collection restates them.

Purpose and Use: The Department created optional use forms: WHD Publication 1420, WH–380–E, WH–380–F, WH–381, WH–382, WH–384, and WH–385, and is considering the creation of a new optional use form for the certification of leave to care for a covered veteran, to assist employers and employees in meeting their FMLA third party notification obligations. WHD Publication 1420 allows employers to satisfy the general notice requirement. *See* § 825.300(a). Form WH–380–E allows an employee requesting FMLA-leave for his or her own serious health condition to satisfy the statutory requirement to furnish, upon the employer's request, appropriate certification to support the need for leave for the employee's own serious health condition. *See* § 825.305(a). Form WH–380–F allows an employee requesting FMLA-leave for a family member's serious health condition to satisfy the statutory requirement to furnish, upon the employer's request, appropriate certification to support the need for leave for the family member's serious health condition. *See* § 825.305(a). Form WH–381 allows an employer to satisfy the regulatory requirement to provide employees taking FMLA leave with written notice concerning eligibility status and detailing specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. *See* § 825.300(b) and (c). Form WH–382 allows employers to satisfy the regulatory requirement of designating leave as FMLA-qualifying. *See* § 825.301(a). Form WH–384 allows an employee requesting FMLA leave based on a qualifying exigency to satisfy the statutory requirement to furnish, upon the employer's request, appropriate certification to support leave for a qualifying exigency. *See* § 825.309. Form WH–385 currently allows an employee requesting FMLA leave based on an active duty covered servicemember's serious injury or illness to satisfy the statutory requirement to furnish, upon the employer's request, a medical certification from an authorized health care provider. *See* § 825.310. The Department is considering the development of a separate optional form for the certification for a serious injury or illness of a covered veteran, or alternatively amending form WH–385 to cover certification of the serious injury or illness of both an active duty servicemember and a covered veteran.

While use of the Department's forms is optional, the regulations require employers and employees to make the third-party disclosures that the forms cover. The FMLA third-party disclosures ensure that both employers and employees are aware of and can exercise their respective rights and meet their respective obligations under the FMLA. The recordkeeping requirements are necessary in order for the Department to carry out its statutory obligation under FMLA § 106, 29 U.S.C. 2616, to investigate and ensure employer compliance. The WHD uses these records to determine employer compliance.

Information Technology: The proposed regulations continue to prescribe no particular order or form of records. *See* § 825.500(b). The preservation of records in such forms as microfilm or automated word or data processing memory is acceptable, provided the employer maintains the information and provides adequate facilities to the Department for inspection, copying, and transcription of the records. In addition, photocopies of records are also acceptable under the regulations. *Id.*

Aside from the basic requirement that third-party notifications be in writing, with the possible exception for the employee's FMLA request (which depends on the requirements of the employer's leave policies), there are no restrictions on the method of transmission. Employers and employees may meet many of their notification obligations by using DOL-prepared forms and publications available on the WHD Web site, *www.dol.gov/whd.* These forms are in a PDF, fillable format for downloading and printing. Employers may keep records that comply with the recordkeeping requirements covered by this information collection in any form, including electronic.

Minimizing Duplication: The FMLA information collections do not duplicate other existing information collections. In order to provide all relevant FMLA information in one set of requirements, the recordkeeping requirements restate a portion of the records employers must maintain under the FLSA. Employers do not need to duplicate the records when basic records maintained to meet FLSA requirements also document FMLA compliance. With the exception of records specifically tracking FMLA leave, the additional records required by the FMLA regulations, including records that must be maintained by covered employers in the airline industry as outlined in proposed § 825.500(h), are records that employers ordinarily maintain in the usual and ordinary course of business. The regulations do impose, however, a three-year minimum time limit that employers must maintain the records. The Department minimizes the FMLA information collection by accepting records maintained by employers as a matter of usual or customary business practices to the extent those records meet FMLA requirements. The Department also accepts records kept due to other governmental requirements (*e.g.,* records maintained for tax and payroll purposes). The Department has reviewed the needs of both employers and employees to determine the frequency of the third-party notifications covered by this collection to establish frequencies that provide timely information with the least burden. The Department has further minimized any burden by developing prototype notices for the third-party disclosures covered by this information collection.

Agency Need: The Department is assigned a statutory responsibility to ensure employer compliance with the FMLA. The Department uses records covered by the FMLA information collection to determine compliance, as required of the agency by FMLA § 107(b)(1). 29 U.S.C. 2617(b)(1). Without the third-party notifications required by the law and/or regulations, employers and employees would have difficulty knowing their FMLA rights and obligations.

Special Circumstances: Because of the unforeseeable and often urgent nature of the need for FMLA leave, notice and response times must be of short duration to ensure that employers and employees are sufficiently informed and can exercise their FMLA rights and obligations. The discussion above outlines the circumstances necessitating the information collection and provides the details of when employees and employers must provide certain notices.

Public Comments: The Department seeks public comments regarding the burdens imposed by the information collection contained in this proposed rule. In particular, the Department seeks comments that evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have

practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses. Commenters may send their views about these information collections to the Department in the same way as all other comments (*e.g.,* through the regulations.gov Web site). All comments received will be made a matter of public record, and posted without change to *http://www.regulations.gov,* including any personal information provided.

An agency may not conduct an information collection unless it has a currently valid OMB approval, and the Department has submitted the identified information collection contained in the proposed rule to OMB for review under the PRA under Control Number 1235–0003. *See* 44 U.S.C. 3507(d); 5 CFR 1320.11. While much of the information provided to the OMB in support of the information collection request appears in this preamble, interested parties may obtain a copy of the full supporting statement by sending a written request to the mail address shown in the **ADDRESSES** section at the beginning of this preamble or by visiting the *http://www.reginfo.gov/public/do/PRAMain* Web site.

In addition to having an opportunity to file comments with the Department, comments about the FMLA information collection requirements may be addressed to the OMB. OMB encourages commenters to submit comments by emailing them to *OIRA_submissions@omb.eop.gov* or faxing them to (202) 395–7285. While commenters are encouraged to email or fax their comments to OMB to ensure timely receipt of comments, commenters may mail OMB their comments by using the following mailing address: Office of Information and Regulatory Affairs, Attention: OMB Desk Officer for the Wage and Hour Division, Office of Management and Budget, 725 17th Street NW., Room 10235, Washington, DC 20503.

Confidentiality: Much of the information covered by this information collection consists of third-party disclosures. Employers generally must maintain records and documents relating to any medical certification, recertification, or medical history of an employee or employee's family members as confidential medical records in separate files/records from usual personnel files. Employers must also generally maintain such records in conformance with any applicable ADA and/or GINA confidentiality requirements. As a practical matter, the Department would only disclose agency investigation records of materials subject to this collection in accordance with the provisions of the Freedom of Information Act, 5 U.S.C. 552, and the attendant regulations, 29 CFR part 70, and the Privacy Act, 5 U.S.C. 552a, and its attendant regulations, 29 CFR part 71.

Hours Burden Estimates: The Department bases the following burden estimates on the estimates the PRIA presented elsewhere in this document, except as otherwise noted. The Department estimates that there are 381,000 covered employers with 1.2 million establishments. There are 72.9 million employees working for covered employers who are eligible for leave. In 2005, 7 million employees took leave. 73 FR 7938.

A. *Employee Notice of Need for FMLA Leave.* While employees normally will provide general information regarding their absences, the regulations may impose requirements for workers to provide their employers with more detailed information than might otherwise be the case. The Department estimates that providing this additional information will take approximately two minutes per employee notice of the need to take FMLA leave.

The Department estimates that there are 193,000 employees who are newly eligible to take leave for a qualifying exigency under the FY 2010 NDAA. Based on leave usage patterns, 30,900 of these employees will take leave for a qualifying exigency (16 percent of 193,000 employees). Based on the leave patterns estimated by the Department discussed in the PRIA, the Department estimates that there will be 679,800 employee requests for qualifying exigency leave.

The Department also estimates that there are 59,700 employees who are newly eligible to take leave to care for a covered veteran under the FY 2010 NDAA. Based on leave usage patterns, 15,500 of these employees will take leave to care for a covered veteran (26 percent of 117,790 employees). Based on the leave patterns estimated by the Department in the PRIA analysis, the Department estimates that there will be 790,500 employee requests for leave to care for a covered veteran.

The Department also estimates that there are 129,760 flight crew members eligible to take FMLA leave. However, some of these employees may already be entitled to leave similar to FMLA leave under collective bargaining agreements. Consequently, the Department anticipates that there are 90,560 airline flight crew employees who may be newly entitled to FMLA leave pursuant to AFCTCA. The Department estimates that 5,951 of these employees will take FMLA leave (5 percent of eligible pilots and 7.9 percent of eligible flight attendants). The PRIA analysis provides an explanation for how these numbers were determined. The Department also anticipates that each of these employees will provide his or her employer with 1.5 notices of need for FMLA leave, totaling 8,930 employee requests for FMLA leave.

New burden: 1,479,230 responses (employee notices of leave) × 2 minutes/60 minutes per hour = 49,308 hours.

Existing employee notification requirements unaffected by this NPRM already impose an estimated burden of 13,419,050 responses and 447,302 hours.

Total burden for this requirement is estimated to be 14,898,280 responses and 496,610 hours.

B. *Notice to Employee of FMLA Eligibility and Rights and Responsibilities.* The Department estimates that each written notice to an employee of FMLA eligibility and notice of rights and responsibilities takes approximately ten minutes. The number of eligibility and rights and responsibilities notices that employers must provide is equal to the number of leave takers.[3] The Department estimates

[3] Based on the leave patterns for qualifying exigency and military caregiver leave, the Department is assuming that all subsequent leave requests will be for the same servicemember for whom the leave was originally requested. The employee is required to notify the employer in each instance of the need for leave. But the employer is not required to provide the employee with a notice of eligibility or rights and responsibilities notice each time the employee requests the leave unless the employee's eligibility status changes. For qualifying exigency leave, 30,900 leave takers will provide 679,800 employer notices of their need for leave. For military caregiver leave, 15,500 leave takers will provide 790,500 employer notices of their need for leave. However, employers will only have to issue 46,400 eligibility notices and rights and responsibilities notices.

However, for the eligible employees who are airline flight crew members, the Department is assuming that each of the employees' 1.5 employer notices of the need for leave are for different FMLA-qualifying reasons, and therefore employers will need to provide a notice of eligibility and a notice of rights and responsibilities for each request for leave. 5,951 leave takers will issue 8,930 employer notices for leave (5,951 × 1.5 leaves = 8,930 notices). Employers will issue 8,930 notices of eligibility and notices or rights and responsibilities.

that employers will provide 55,330 FMLA eligibility and rights and responsibilities notices to employees under the new military and airline amendments to the FMLA. Employers may use optional Form WH–381 to satisfy this requirement.

New burden: 55,330 total responses (notices of eligibility and rights and responsibilities) × 10 minutes/60 minutes per hour = 9,222 hours.

Existing employee eligibility and rights and responses notification requirements unaffected by this NPRM already impose an estimated burden of 21,764,900 responses and 9,491,476 hours.

Total burden for this requirement is estimated to be 21,820,230 responses and 9,500,698 hours.

C. Employee Certifications

1. Medical Certification and Recertification. The Department estimates that 90 percent of airline flight crew employees who take FMLA leave will do so for a serious health condition of their own or that of a family member. The Department also assumes, due to the safety concerns of the airline industry, that employers will require that all of these employees provide medical certification to their employer. As it did in the 2008 paperwork analysis, and with no present reason to change its estimate, the Department further estimates that second or third opinions and/or recertifications add 15 percent to the total number of certifications, and that employees spend 20 minutes in obtaining the certifications.[4] Employers may have employees use optional Forms WH–380–E and WH–380–F to satisfy this statutory requirement.

5,951 airline flight crew employees taking leave × 90% rate for a serious health condition × 90% of employees asked to provide initial medical documentation = 4,820 employees providing initial medical certification.

New burden: 4,820 × 1.15 subsequent medical certifications = 5,543 total employee medical certifications.

5,543 × 20 minutes/60 minutes per hour = 1,848 hours.

The Department does not associate a paperwork burden with the portion of this information collection that employers complete since—even absent the FMLA—similar information would customarily appear in their internal instructions requesting a medical certification or recertification. The Department accounts for health care provider burdens to complete these certifications as a ''maintenance and operation'' cost burden, which is discussed later.

2. *Fitness-for-Duty Medical Certification.* The Department assumes that the Federal Aviation Authority (FAA) requires airline flight crew employees, specifically pilots and flight attendants, to receive regular medical evaluations as a condition of their continued employment. Therefore the Department estimates that 50 percent of airline pilots and 10 percent of flight attendants will be required to submit fitness-for-duty medical certifications pursuant to the FMLA regulations. The Department estimates that completing a fitness-for-duty certification will take an employee ten minutes.

New burden: 25,135 responses (employee certifications) × 10 minutes/60 minutes per hour = 4,189 hours.

3. *Certification of Qualifying Exigency for Military Family Leave.* The Department estimates that 30,900 employee-family members will be eligible to take FMLA leave to address qualifying exigencies due to the expansion of qualifying exigency leave under the FY 2010 NDAA to certain family members of members of the Regular Armed Forces. The Department estimates that employers will request certification from 30,900 employees for qualifying exigency leave. Employers may use optional Form WH–384 to satisfy this requirement. The Department further estimates that it will take approximately 20 minutes for a Human Resources staff member to request, review, and verify the employee's certification papers.

New burden: 30,900 total responses (employee qualifying exigency leave certifications) × 20 minutes/60 minutes per hour = 10,300 hours.

4. *Certification for Leave Taken to Care for a Covered Servicemember—Current Servicemember.* Pursuant to the FY 2010 NDAA, an eligible employee-family member may take FMLA leave to care for a current servicemember who has a serious injury or illness that existed before the member's active duty and was aggravated by service in the line of duty while on active duty. At this time the Department does not have sufficient information to develop an estimate of employees who will qualify for military caregiver leave for a covered servicemember with a serious injury or illness that existed prior to the servicemember's active duty and was aggravated in the line of duty on active duty. Accordingly, the Department will not revise the current burden analysis for certification of leave to care for a current servicemember at this time. The Department will review the comments that it receives in response to the NPRM and based on the received comments may revise the burden analysis at the final rule stage.

5. *Certification for Leave Taken to Care for a Covered Servicemember—Covered Veteran.* The FY 2010 NDAA provided FMLA leave for eligible employees to care for a covered veteran with a serious injury or illness that was incurred in the line of duty on active duty (or existed before the member's active duty and was aggravated in the line of duty on active duty) and manifested itself before or after the member became a veteran. The Department estimates that 15,500 employees will be eligible to take leave to care for a covered veteran. The Department expects that employers will request certification forms for this leave. The Department estimates that it will take a Human Resources specialist 30 minutes to request, review, and verify the employee's certification papers.

New burden: 15,500 responses (certification papers) × 30 minutes/60 minutes per hour = 7,750 hours.

All new certification and recertification requirements as a result of this NPRM impose a burden of 77,078 responses and 24,087 hours.

All existing certification and recertification requirements unaffected by this NPRM already impose an estimated burden of 12,080,153 responses and 4,009,851 hours.

Total burden for this requirement is estimated to be 12,157,231 responses and 4,033,938 hours.

D. *Notice to Employees of FMLA Designation.* The Department estimates that each written FMLA designation notice takes approximately 10 minutes to complete.

New burden: 55,330 total responses (designation notices) × 10 minutes/60 minutes per hour = 9,222 hours.

Existing designation notification requirements unaffected by this NPRM already impose an estimated burden of 17,383,325 responses and 4,693,574 hours.

Total burden for this requirement is estimated to be 147,438,655 responses and 4,702,796 hours.

E. *Notice to Employees of Change of 12-month period of determining FMLA eligibility.* The Department assumes that 10 percent of covered airline employers will choose to change their 12-month period for determining eligibility since the AFCTCA. The Department also assumes these employers will employ 10 percent of newly added eligible

[4] The estimated time of 20 minutes reflects the Department's expectation that it will take 20 minutes to complete optional form WH–380. The Department assumes that while visiting the health care provider for a previously scheduled appointment, the individual will have the certification completed by the doctor's office.

employees in the airline industry. The Department continues to estimate from the 2008 analysis that it will take an employer 10 minutes to make this employee notification, and this time was amortized to 1.79336117 seconds per individual response.

90,560 newly added employees in the airline industry × 10% for employers who change the period = 9,056 responses.

9,056 responses × 1.79336117 = 5 hours.

Existing similar notification requirements unaffected by this NPRM already impose a burden of 9,580,000 responses and 4,772 hours.

Total burden for this requirement is estimated to be 9,589,056 responses and 4,777 hours.

F. *Key Employee Notification.* The Department assumes that a very small percentage of airline flight crew employees will be determined key employees. As such, the Department does associate a burden hour estimate with this provision.

Existing notification requirements unaffected by this NPRM already impose a burden of 42,787 responses and 3,566 hours.

Total burden for this requirement is estimated to be 42,787 responses and 3,566 hours.

G. *Periodic employee status reports.* The Department estimated in the 2008 paperwork analysis that employers require periodic status reports from 25 percent of FMLA-leave users, and since it has not received any evidence to believe otherwise, it continues to estimate 25 percent today. The Department also estimates that a typical employee would normally respond to an employer's request for a status report; however to account for any burden the regulations may impose, the Department estimates that 10 percent of employees will respond to the request only because of the regulatory requirement, imposing a burden of two minutes per response. The Department also estimates that each such employee provides two periodic status reports.

New burden: 52,351 leave takers × 25% rate of employer requests × 10% of employees who comply due to the regulations = 1,309 employee responses.

1,309 employee responses × 2 responses = 2,618 total responses.

2,618 responses × 2 minutes/60 minutes = 87 hours.

Existing status report notification requirements unaffected by this NPRM already impose an estimated burden of 369,704 responses and 12,323 hours.

Total burden for this requirement is estimated to be 372,322 responses and 12,410 hours.

H. *Documenting Family Relationships.* As it did in the 2008 analysis, the Department estimates that 50 percent of traditional FMLA leave takers do so for ''family'' related reasons, such as caring for a newborn or recently adopted child or a qualifying family member with a serious health condition. 73 FR 7939. As such, the Department assumes that 50 percent of airline flight crewmembers who take leave will take it for family reasons. (2,976 of 5,951 leave takers). Under the military amendments all employees who take leave will be doing so for a family-related reason. (46,400 leave takers).

As it did in the 2008 analysis, the Department estimates that employers may require additional documentation to support a family relationship in five percent of these cases, and the additional documentation will require 5 minutes.

New burden: 49,376 (employees taking leave for family-related reasons) × 5% (additional documentation) = 2,469 employees required to document family relationships.

2,469 employees × 5 minutes/60 minutes per hour = 206 hours.

Existing family documentation requirements unaffected by this NPRM already impose an estimated burden of 183,987 responses and 15,332 hours.

Total burden for this requirement is estimated to be 186,456 responses and 15,538 hours.

M. *Notice to employee of pending cancellation of health benefits.* Pursuant to the AFCTCA, airline flight crew employees are newly eligible to take FMLA-qualifying leave. However, the Department believes employer policies and agreements that airline flight crew employees may be a party to preclude employers from canceling employees' health benefits. Therefore, at this time the Department will not revise the current burden analysis for employee notice of pending cancellation of health benefits. The Department will review the comments that it receives in response to the NPRM, and based on the received comments may revise the burden analysis at the final rule stage.

Existing notification requirements unaffected by this NPRM already impose a burden of 142,619 responses and 11,885 hours.

N. *General Recordkeeping.* The Department believes that the FMLA does not impose any additional burden on employers in the airline industry, as the records required to be maintained by the FMLA should already be maintained by the employers as part of their usual and customary business practices. Therefore, the Department is not proposing a new burden hour estimate for this provision.

The existing estimated burden for these elements is 13,419,050 responses and 279,564 hours.

Total burden for this requirement is estimated to be 13,419,050 responses and 279,564 hours.

Other respondent cost burdens (maintenance and operation): Airline flight crew employees seeking FMLA-leave for their own serious health condition or the serious health condition of a family member, must obtain, upon their employers' request, a certification of their own or family member's serious health condition. Similarly, employees seeking FMLA leave for military caregiver leave must obtain, upon their employer's request, a certification of the covered servicemember's serious injury or illness. Often the health care provider's office staff completes the form for the provider's signature. In other cases, the health care provider personally completes it. In the 2008 analysis, the Department assumed that while most health care providers do not charge for completing these certifications, some do. The Department has no reason to believe that this assumption has changed since its last analysis.

The Department estimates that it will take approximately 20 minutes to complete a certification for a serious health condition, and 10 minutes to complete a fitness for duty certification. The time would equal the employee's time in obtaining the certification. The Department used the median hourly wage for a physician's assistant of $41.54 plus 40 percent in fringe benefits to compute cost of $19.39 for the certification of a serious health condition ($58.17 × 20 minutes/60 minutes per hour), and $9.69 for the fitness-for-duty certification. *See* BLS Occupational Employment Statistics, Occupational Employment and Wages, May 2010, *http://www.bls.gov/oes/current/oes291071.htm.*

The Department estimates that it will take approximately 20 minutes to complete the certification for a covered veteran. Thus, the time would equal the employee's time in obtaining the certification. The Department used the median hourly wage for a physician's assistant of $41.54 plus 40 percent in fringe benefits to compute cost of $19.39 for the certification to care for covered veteran ($58.17 × 20 minutes/60 minutes per hour). *See* BLS Occupational Employment Statistics, Occupational Employment and Wages, May 2010, *http://www.bls.gov/oes/current/oes291071.htm.*

New burden: 15,500 medical certifications for covered veterans × $19.39 cost per certification = $300,545.

The maintenance and operations cost estimate for the existing FMLA information collections is $162,821,810.

Grand total of maintenance and operations cost burden for respondents = $163,122,355.

The burden imposed by this information collection, as proposed to be revised, is summarized as follows:

Agency: Wage and Hour Division.

Title of Collection: Family and Medical Leave Act, as Amended.

OMB Control Number: 1235–0003.

Affected Public: Individuals or Households; Private Sector—Businesses or other for profits.

Not-for-profit institutions, Farms: State, Local or Tribal Governments.

Total Estimated Number of Respondents: 7,301,451 (52,351 added by this NPRM).

Total Estimated Number of Responses: 91,066,686 (1,681,111 added by this NPRM).

Total Estimated Annual Burden Hours: 19,061,782 (92,137 added by this NPRM).

Total Estimated Annual Other Costs Burdens: $163,122,355 ($300,545 added by this NPRM).

V. Executive Order 12866; Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. However, in keeping with the spirit of Executive Order 12866, the Department had the rule reviewed by OMB. The Family and Medical Leave Act (FMLA or Act) is administered by the U.S. Department of Labor, Wage and Hour Division (WHD). The FMLA provides a means for employees to balance their work and family responsibilities by taking unpaid leave for certain reasons. The Act is intended to promote the stability and economic security of families as well as the nation's interest in preserving the integrity of families.

The FMLA applies to any employer in the private sector engaged in commerce or in an industry or activity affecting commerce who employed 50 or more employees each working day during at least 20 weeks in the current or preceding calendar year; all public agencies and local education agencies; and most Federal employees.[5]

To be eligible for leave, an individual must:

- Be employed by a covered employer at a worksite that employs at least 50 employees within 75 miles;
- Have worked at least 12 months for the employer (not necessarily consecutively); and
- Have at least 1,250 hours of service during 12 months preceding the beginning of the FMLA leave (as discussed herein, special hours of service rules apply to airline flight crew employees).

The FMLA provides for job-protected, unpaid leave, which may be continuous or intermittent, and allows for the substitution of paid leave. Employees are entitled to:

- A combined total of 12 workweeks of leave in a 12-month period for:
  - Birth and care of the employee's child (within one year);
  - Placement with employee of a child for adoption or foster care (within one year);
  - Care of a spouse, child, or parent with serious health condition;
  - The employee's own serious health condition; and
  - Qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member and is on covered active duty or has been notified of an impending call or order to covered active duty.

Employees are also entitled to 26 workweeks of leave in a single 12-month period to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

A. Need for Regulation

The proposed changes to the FMLA regulations are primarily to implement statutory amendments to the FMLA's military family leave provisions and separate statutory changes affecting the eligibility requirements for airline flight crewmembers and flight attendants (collectively referred to as airline flight crew employees). Additionally, the military statutory amendments are designed to make it easier for workers with family in military service to balance their work and family lives during particularly demanding times without the fear of losing their jobs. 73 FR 68070. The amendments relating to the airline flight crew employees established a special hours of service eligibility requirement in order to address this industry's unique scheduling practices and expand access to FMLA-protected leave for flight crew employees.

1. National Defense Authorization Act for Fiscal Year 2010 Amendments

On October 28, 2009, the President signed into law the 2010 National Defense Authorization Act (FY 2010 NDAA), Public Law 111–84. Section 565(a) of the FY 2010 NDAA amends the FMLA. These amendments expand the military family leave provisions added to the FMLA in 2008, which provide qualifying exigency and military caregiver leave for employees with family members who are covered military members.

The FY 2010 NDAA amendments to the FMLA provide that an eligible employee may take FMLA leave for any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on (or has been notified of an impending call to) ''covered active duty'' in the Armed Forces. ''Covered Active Duty'' for members of a regular component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country. For members of the U.S. National Guard and Reserves it means duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation as defined in section 101(a)(13)(B) of title 10, United States Code. Prior to the FY 2010 NDAA amendments, (1) qualifying exigency leave did not apply to employees with family members serving in a regular component of the Armed Forces and (2) qualifying exigency leave for family members of members of the National Guard and Reserves was not limited to deployment to a foreign country in support a contingency operation.

The FY 2010 NDAA also expands the military caregiver leave provisions of the FMLA. Military caregiver leave entitles an eligible employee who is the spouse, son, daughter, parent, or next of kin of a ''covered servicemember'' to take up to 26 workweeks of FMLA leave in a ''single 12- month period'' to care

[5] Most Federal employees are covered under Title II of the FMLA (incorporated in Title V, Chapter 63, Subchapter 5 of the U.S. Code), which is administered by the Office of Personnel Management under regulations set forth at 5 CFR Part 630, Subpart L.

for a covered servicemember with a serious injury or illness. Under the FY 2010 NDAA amendments, the definition of ''covered servicemember'' is expanded to include a veteran ''who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness'' if the veteran was a member of the Armed Forces ''at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.'' Prior to the FY 2010 NDAA amendments, military caregiver leave was limited to care for current members of the U.S. Armed Forces, including members of the Regular Armed Forces and members of the National Guard and Reserves.

In addition, the FY 2010 NDAA amends the FMLA's definition of a ''serious injury or illness'' for a current member of the U.S. Armed Forces, including National Guard or Reserves, to include not only a serious injury or illness that was incurred by the member in the line of duty on active duty but also one that ''existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces'' that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating. For covered veterans, the term is defined as ''a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.''

2. Airline Flight Crew Technical Amendments

On December 21, 2009, the President signed into law the Airline Flight Crew Technical Corrections Act, Public Law 111–119. This amendment to the FMLA establishes a special hours of service eligibility requirement for airline flight crew employees. This amendment also permits the Secretary of Labor to provide by regulation a method of calculating FMLA leave for airline flight crew employees. Airline flight crew employees continue to be subject to the FMLA's other eligibility requirements.

The amendment provides that an airline flight attendant or flight crew member meets the hours of service requirement if, during the previous 12-month period, he or she has worked or been paid for:

■ Not less than 60 percent of the applicable total monthly guarantee (or its equivalent), and

■ Not less than 504 hours, not including personal commute time, or time spent on vacation, medical, or sick leave.

Prior to this amendment, many flight crew employees were not eligible for FMLA leave because the nature of the airline industry, including regulatory limits on the flying time, prevented them from meeting the required 1,250 hours of service requirement. Airline employees other than flight crew employees continue to be subject to the 1,250 hours of service eligibility requirement with hours of service determined according to principles established under the FLSA for compensable work time (*i.e.,* ''hours worked'').

Summary of Impacts [6]

The Department projects that the average annualized cost of the rule will be somewhat more than $61 million per year over 10 years. The rule is expected to cost $72.3 million in the first year, and $59.8 million per year in subsequent years. The amendment to extend FMLA provisions to flight crew employees accounts for 0.5 percent of first year costs and 0.7 percent in subsequent years, while military exigency and caregiver leave account for 81.4 percent of first year costs and 99.4 percent of costs in subsequent years. Regulatory familiarization costs account for 17.4 percent of first year costs. By provision, the costs related to the provision of health benefits account for the largest share of costs, about 44.5 percent of costs in the first year of the rule, and 53.9 percent of costs each in each of the following years.

TABLE 1–1—SUMMARY OF IMPACT OF PROPOSED CHANGES TO FMLA

Component	Year 1 ($1000)	Year 2 ($1000)	Annualized ($1000)	
			Real discount rate 3%	Real discount rate 7%
Total	$72,398	$59,791	$61,226	$61,469
By Amendment * * *				
Any FMLA revision	12,607	0	1,435	1,678
Flight Crew Technical Amendment	372	372	372	372
NDAA 2010	59,419	59,419	59,419	59,419
Qualifying Exigency	*23,052*	*23,052*	*23,052*	*23,052*
Expanded R&R Leave	*2,781*	*2,781*	*2,781*	*2,781*
Military Caregiver	*33,587*	*33,587*	*33,587*	*33,587*
By Requirement * * *				
Regulatory Familiarization	12,607	0	1,435	1,678
Employer Notices	26,851	26,851	26,851	26,851
Certifications	722	722	722	722
Health Benefits	32,218	32,218	32,218	32,218

B. Proposed Impacts

1. Industry Profile

The first step in the analysis is to estimate the number of firms, establishments and employees in the public and private sectors that will be impacted by the proposed changes. The Department estimates that there are a total of 7.9 million firms and government agencies with 10.6 million establishments in the U.S.[7] These entities employ 133 million workers with an annual payroll of $5.9 trillion.[8]

[6] On certain provisions, the Department provides a range of estimates. Where the ranges provide a summary of information, the midpoint of the range is represented.

[7] Number of firms and establishments includes private industry, farms, and governments.

[8] The Department's analysis is based on: USDA 2007 Census of Agriculture, available at: *http://www.agcensus.usda.gov/Publications/2007/index.asp;* 2007 Annual Survey of State and Local Government Employment and Payroll, available at: *http://www.census.gov/govs/estimate/;* and

Continued

Estimated annual revenues equal $33.2 trillion and estimated net income is $1.1 trillion.[9]

After identifying and excluding from the analysis those businesses that are not covered by the FMLA, the Department estimates that there are 381,000 covered firms and government agencies with 1.2 million establishments. These firms employ 91.1 million workers that will potentially be impacted by the proposed rule changes. These employers have an annual payroll of $5.0 trillion, estimated annual revenues of $23.7 trillion, and estimated net income of $1.03 trillion.

Table 2–1 presents the estimated number of establishments, firms, employment, annual wages, revenue, and net income for all employers. The following subsection describes in detail the methods and data sources used to develop the industry profile.

2. Methods and Data Sources

In order to determine the impact of this proposed rule, it is important to understand the analysis underlying the 2008 final rule. Therefore, this section describes the data sources and methods used to calculate the 2008 industry profile and identify employers that will be impacted by the proposed rule. The foundation for the profile is a special tabulation of data produced by the Bureau of Labor Statistics (BLS) Quarterly Census of Employment and Wages (QCEW) Program. The tabulation describes the distribution of establishments and employment by major industry division (2-digit NAICS level) across nine employment size categories. As explained more fully below, the analysis is based on establishment-level data because employer coverage and employee eligibility for the proposed rule is determined, in part, by establishment size.

The number of establishments and employment for each 2-digit industry, as defined by the North American Industry Classification System (NAICS), by employment size class, were obtained directly from BLS Quarterly Census of Employment and Wages Business Employment Dynamics (QCEW).[10] The number of farms was obtained from the U.S. Department of Agriculture 2007 Census of Agriculture. The number of governments and number of government workers was obtained from the Census of Governments.

The number of firms was determined by distributing the BLS QCEW total number of firms at the 2-digit industry level to each size class using the proportion of firms in each size class calculated from the Statistics of U.S. Businesses 2006. The Department used a similar approach to determine the annual payroll within each industry. The total annual payroll at the 2-digit industry level was distributed to each of the employment size classes using the proportion of payroll in each size class calculated from the Statistics of U.S. Businesses 2006.[11] Annual wages for government entities were obtained from the U.S. Census of Governments.[12]

In order to determine estimated 2008 revenues for each industry and employment size class, the Department calculated the receipts per employee in each size class from the 2007 Statistics of U.S. Business by aggregating the 2007 size classes to match BLS size classes, then dividing total receipts by the number of employees in each size class. Then, the Department estimated the BLS worker output index and producer price index for each two-digit sector as a weighted average of industries composing that sector. For sectors where no indices were available, the Department used the median value from those sectors with indices. Finally, to obtain an estimate of 2008 revenues, the Department multiplied receipts per employee in each size class by the 2008 number of employees in each size class, the worker output index and the producer price index. Government revenues were directly obtained from the 2007 Census of Government Finance.[13]

To determine estimated 2008 net income for each industry and employment class size, the Department calculated the average revenues per firm in each size class and calculated the ratio of net income to total receipts using the 2007 IRS Statistics of Income.[14] The estimated average revenue per firm in each size class was used to select an appropriate ''size of business receipts'' category from Statistics of Income for a size class in a particular industry and to generate the ratio of net income to total receipts for that category. The 2007 ratio of net income to total receipts was multiplied by the estimated 2008 revenues in each size class to calculate the estimated 2008 net income. Government net income was estimated by subtracting expenditures from revenues.[15]

3. Covered Employers

The FMLA applies to any employer in the private sector engaged in commerce or in an industry affecting commerce who employed 50 or more employees each working day during at least 20 weeks in the current or preceding calendar year; all public agencies and local education agencies; and most Federal employees.

First, the Department dropped from the profile all establishments in employment size classes of less than 50 employees (*i.e.,* 0–49 employees) except for those in elementary and secondary education. For the purpose of this analysis, all Federal government employers are assumed to be covered by FMLA regulations as administered by the Office of Personnel Management and, therefore, not subject to these revisions; State and local government employees, as well as U.S. Postal Service employees, are covered by this proposed rulemaking and are included in the profile of covered workers. Additionally, based on estimates from the 2007 Census of Agriculture, it is likely that very few farms employ more than 50 employees, and among those that do, very few of their employees are eligible for FMLA due to the seasonality of the work. As a result, this analysis assumes that no farm employers are covered by FMLA.[16] *See* Table 2–2 for a summary of covered employers.

Additionally, the Department used Statistics of U.S. Business, 2006 at the 6-digit NAICS level to identify the proportion of employers in NAICS 61 ''Education Services'' who are

Unpublished Special Tabulations produced by the Bureau of Labor Statistics, Quarterly Census of Employment and Wages (QCEW) Program. For more information on the QCEW program, please see the Web site: *http://www.bls.gov/cew/.*

[9] Estimated net income does not include net income for farms. The Department's analysis is based on: U.S. Census Bureau, Statistics of U.S. Businesses, ''Number of Firms, Number of Establishments, Employment, Annual Payroll, and Receipts by Employment Size of the Enterprise for the United States, All Industries—2002''; Unpublished Special Tabulations, BLS; and, IRS, 2007 Statistics of Income, Returns of Active Corporations, Table5—Selected Balance Sheet, Income Statement, and Tax Items, by sector, by Size of Business Receipts.

[10] Unpublished Special Tabulations, BLS.

[11] Statistics of U.S. Businesses, 2006 features a range of size classes; in some cases these size classes were aggregated to match the size classes available in the BLS Quarterly Census of Employment and Wages Business Employment Dynamics data set.

[12] 2007 Annual Survey of State and Local Government Employment and Payroll, available at: *http://www.census.gov/govs/estimate/.*

[13] U.S. Census Bureau 2007 Census of Government Finance, available at: *http://www.census.gov/govs/estimate/index.html#state_local.*

[14] Internal Revenue Service, 2007 Statistics of Income, Returns of Active Corporations, Table 5—Selected Balance Sheet, Income Statement, and Tax Items, by Sector, by Size of Business Receipts.

[15] 2007 Census of Government Finance.

[16] Based on the 2007 Census of Agriculture, about 2% of all farms have more than 10 hired employees, suggesting that the number of covered farms is likely very close to zero. Due to the seasonal nature of farm employment, it is similarly likely that few employees would be eligible for FMLA leave even if the farm were covered.

categorized as ''Elementary and Secondary Education.'' This proportion was used to calculate the number of employers in each size class in NAICS 61 that are considered local education agencies, and, therefore, covered by FMLA regardless of size. These employers were subtracted from the broader category of education services, and treated separately by the analysis; the remaining employers in education services with fewer than 50 employees were dropped from the profile.

Next, the Department calculated an appropriate adjustment factor to account for establishments with fewer than 50 employees at a worksite owned by a firm with more than 50 employees within 75 miles. It is necessary to add an estimated number of these employees back in to the industry profile to avoid underestimating the number of covered employers and eligible employees affected by the proposed rule.

The Department calculated this adjustment following the approach described in the 2007 ''Preliminary Analysis of the Impacts of Prospective Revision to the Regulation Implementing the FMLA of 1993 at 29 CFR 825'' (hereafter, ''the 2007 PRIA'').[17] In summary, the Department estimated an upper and lower bound on the number of employees who may be employed at worksites with less than 50 employees owned by firms with greater than 50 employees within 75 miles, and calculated the difference between these two estimates. In the absence of reliable data on the geographic proximity of establishments owned by the same firm, and employment at those establishments, we assumed 50 percent of workers at these establishments are employed at covered worksites.

The lower bound is estimated at the 2-digit industry level as the employment in establishments with more than 50 employees according to the U.S. County Business Patterns of 2007.[18] The upper bound is estimated as employment in firms with greater than 50 employees according to the Statistics of U.S. Businesses 2007 Small employment size classes.[19] Next, the Department calculated fifty percent of the difference between the upper and lower bound to estimate the number of workers at covered worksites of less than 50 employees in 2007. This estimate was then calculated as a percent of total employment in each industry, and that percent multiplied by the total employment in each industry in 2008 to estimate the number of workers at covered worksites of less than 50 employees in 2008. The Department did not attempt to distribute these workers to size classes. This approach was repeated to estimate the number of establishments and annual payroll for this category.

TABLE 2–1—2008 INDUSTRY PROFILE: ALL PRIVATE AND PUBLIC SECTOR EMPLOYERS

NAICS	Industry	Number of establishments	Employment	Number of firms	Annual payroll ($1000)	Estimated revenues ($1000)	Estimated net income ($1000)
11	Agriculture, Forestry, Fishing & Hunting.	93,063	1,083,602	86,256	30,293,755	191,671,485	2,407,103
11f	Farms	2,204,792	843,000	2,204,792	18,349	283,520,000	*
21	Mining	29,816	728,810	21,206	61,569,636	265,308,320	23,777,149
22	Utilities	16,000	560,628	7,296	46,832,814	588,750,468	28,522,162
23	Construction	788,982	6,691,659	686,282	348,060,594	1,764,016,511	13,137,722
31–33	Manufacturing	346,637	12,991,886	284,894	727,472,090	5,042,240,515	220,025,292
42	Wholesale Trade	587,802	5,900,701	341,387	366,499,181	5,217,289,386	34,862,575
44–45	Retail Trade	587,802	5,900,701	341,387	366,499,181	5,217,289,386	34,862,575
48–49	Transportation and Warehousing *.	207,554	4,981,034	154,026	182,514,664	920,250,059	14,548,904
51	Information	136,001	2,970,258	72,676	210,177,173	829,642,598	46,672,698
52	Finance and Insurance.	458,828	5,823,542	233,643	492,482,993	2,590,473,795	114,918,333
53	Real Estate and Rental and Leasing.	342,250	2,085,053	243,368	90,735,012	439,247,207	14,606,997
54	Professional, Scientific & Technical Serv.	933,257	7,875,748	695,416	578,284,495	1,476,151,016	18,463,759
55	Management of Companies & Enterprises.	48,434	1,895,781	35,257	178,611,324	466,204,666	56,954,063
56	Admin, Support, Waste Mgmt & Remed Serv.	432,089	7,705,263	315,462	254,989,288	649,497,228	4,026,201
61	Education Services—Total.	84,911	2,501,830	67,800	96,989,952	268,567,412	4,714,997
61a	*Education Services—all others.*	64,952	1,623,889	51,100	72,612,918	185,424,684	3,752,850
61e	*Education Services—Elementary and Secondary.*	19,959	877,941	18,639	24,377,033	83,142,727	958,024
62	Health Care and Social Assistance.	748,151	15,910,960	594,285	655,441,919	1,749,782,977	14,443,129
71	Arts, Entertainment, and Recreation.	116,178	1,816,000	98,613	62,461,364	193,817,674	2,970,331

[17] CONSAD Research Corporation, December 7, 2007. Pages 6–8.

[18] U.S. County Business Patterns of 2007, available at URL: *http://www.census.gov/econ/cbp/download/07_data/index.htm.*

[19] Statistics of U.S. Businesses, available at URL: *http://www.census.gov/econ/susb/.*

TABLE 2–1—2008 INDUSTRY PROFILE: ALL PRIVATE AND PUBLIC SECTOR EMPLOYERS—Continued

NAICS	Industry	Number of establishments	Employment	Number of firms	Annual payroll ($1000)	Estimated revenues ($1000)	Estimated net income ($1000)
72	Accommodation and Food Services.	591,605	11,218,253	447,113	189,461,657	559,882,364	4,192,717
81 & 95 ...	Other Services & Auxiliaries.	1,112,327	4,466,292	455,279	128,156,787	543,507,574	3,291,846
99	Unclassified	140,476	190,374	100,969	6,592,088	29,688,367	763,157
.....	*All industries*	*10,437,770*	*113,977,648*	*7,786,426*	*5,107,828,608*	*29,672,157,281*	*717,263,252*
	Government	*179,952*	*19,385,969*	*89,526*	*769,877,876*	*3,536,511,409*	*401,304,167*
Public and Private Sector Total		10,617,722	133,363,617	7,875,952	5,877,706,485	33,208,668,690	1,118,567,419

*Sources: BLS Unpublished special tabulations; 2007 Annual Survey of State and Local Government Employment and Payroll; 2007 Census of Government Finance; Census of Agriculture; IRS 2001 Statistics of Income.

* Net income for farms is not available.

* NAICS code 48–49 includes the Postal Service (Source: www.usps.com, and USPS Annual Report 2008); postal service employees are covered by the proposed rulemaking while most other Federal employees are covered under FMLA regulations administered by the Office of Personnel Management.

TABLE 2–2—2008 INDUSTRY PROFILE: COVERED EMPLOYERS

NAICS	Industry	Number of establishments	Employment	Number of firms	Annual payroll ($1000)	Estimated revenues ($1000)	Estimated net income ($1000)
11	Agriculture, Forestry, Fishing & Hunting.	4,867	537,602	2,043	9,150,199	90,343,170	1,295,858
11f	Farms	*	*	*	*	*	*
21	Mining	5,370	534,418	1,614	53,624,288	214,181,588	22,080,354
22	Utilities	6,428	472,599	915	48,585,145	503,859,306	26,102,570
23	Construction	25,880	2,651,363	19,032	181,278,503	787,171,326	6,956,491
31–33	Manufacturing	63,903	10,272,292	34,929	637,870,080	4,435,460,496	211,718,345
42	Wholesale Trade	78,026	3,056,807	21,258	291,441,021	2,862,989,339	21,066,806
44–45	Retail Trade	215,675	10,146,178	22,267	338,457,243	3,998,484,468	84,801,022
48–49	Transportation and Warehousing*.	32,748	3,907,594	8,755	216,154,621	715,836,368	12,813,522
51	Information	38,790	2,323,185	5,025	205,020,423	693,282,719	42,915,077
52	Finance and Insurance.	115,439	4,007,678	9,251	477,979,216	2,195,244,677	104,279,817
53	Real Estate and Rental and Leasing.	37,505	842,136	5,183	62,400,405	162,795,517	8,385,978
54	Professional, Scientific & Technical Serv.	59,834	4,020,484	17,396	407,974,385	789,102,823	13,716,076
55	Management of Companies & Enterprises.	22,249	1,650,176	24,332	187,531,345	334,394,917	40,851,477
56	Admin, Support, Waste Mgmt & Remed Serv.	52,724	5,415,739	20,048	218,388,045	389,310,585	2,811,964
61	Education Services—Total.	—	—	—	—	—	—
61a	*Education Services—all others.*	7,557	1,328,922	3,297	67,069,643	158,106,124	3,524,541
61e	*Education Services—Elementary and Secondary.*	19,959	877,941	18,639	24,377,033	83,142,727	958,024
62	Health Care and Social Assistance.	114,670	11,364,063	34,298	523,657,606	1,201,616,565	12,720,148
71	Arts, Entertainment, and Recreation.	10,311	1,134,984	5,779	38,736,030	115,713,478	2,110,154
72	Accommodation and Food Services.	105,210	5,955,522	27,601	150,133,805	285,088,709	2,949,814
81 & 95 ...	Other Services & Auxiliaries.	50,994	1,260,055	9,486	59,437,649	170,730,790	1,664,491
99	Unclassified	13	1,185	11	0	0	0
.....	*All industries*	*1,068,152*	*71,760,923*	*291,159*	*4,199,266,686*	*20,186,855,692*	*623,722,527*
	Government	*179,952*	*19,385,969*	*89,526*	*769,877,876*	*3,536,511,409*	*401,304,167*

TABLE 2–2—2008 INDUSTRY PROFILE: COVERED EMPLOYERS—Continued

NAICS	Industry	Number of establishments	Employment	Number of firms	Annual payroll ($1000)	Estimated revenues ($1000)	Estimated net income ($1000)
Total	.....	1,248,104	91,146,892	380,685	4,969,144,562	23,723,367,101	1,025,026,694

Sources: BLS Unpublished special tabulations; 2007 Annual Survey of State and Local Government Employment and Payroll; 2007 Census of Government Finance; Census of Agriculture; IRS 2001 Statistics of Income.

* Based on the 2007 Census of Agriculture, about 2% of all farms have more than 10 hired employees, suggesting that the number of covered farms is likely very close to zero. Due to the seasonal nature of farm employment, it is similarly likely that few employees would be eligible for FMLA leave even if the farm were covered.

* NAICS code 48–49 includes the Postal Service (Source: www.usps.com, and USPS Annual Report 2008); postal service employees are covered by the proposed rulemaking while most other Federal employees are covered under FMLA regulations administered by the Office of Personnel Management.

C. FMLA Leave Profile

This section describes how, in light of the recent amendments, the Department estimated the number of covered, eligible workers who may be in a position to take qualifying exigency or military caregiver leave and the number of leaves they may take, and the number of covered eligible flight crew members and flight attendants who may take FMLA leave and the number of leaves they may take.

1. Military Family Leave Under FMLA

The proposed changes to the military family leave provisions of FMLA impact a variety of employees and employers across the economy. While these proposed changes do not alter the conditions for employer coverage or employee eligibility under the FMLA, they do change the circumstances under which eligible employees who are family members of covered servicemembers qualify for FMLA leave and, as a result, will affect the number and frequency of FMLA leaves taken for those reasons.

In order to estimate the number of individuals who may take leave under the qualifying exigency or military caregiver provisions as a result of the proposed changes, the Department estimated the number of servicemembers or veterans covered by the amendments, completed an age profile of those individuals and estimated the number of eligible family members or potential caregivers likely to be associated with each age range. This method is described in full detail in Appendix A.

a. Qualifying Exigency

The FY 2010 NDAA amendments to the FMLA provide that an eligible employee may take FMLA leave for any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on (or has been notified of an impending call to) covered active duty in the Armed Forces. For members of a regular component of the Armed Forces, this means duty during deployment to a foreign country. For members of the U.S. National Guard and Reserves, it means duty during deployment to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

To determine the number of eligible employees who may take FMLA leave as a result of this amendment, the Department first estimated the number of servicemembers on covered active duty and the number of family members who may be eligible and employed at a covered employer and then subtracted those servicemembers and family members already entitled to take qualifying exigency leave prior to the FY 2010 NDAA amendments. Clear, consistent data on the number of military personnel deployed in any given year are difficult to find; many sources, for example, do not adequately distinguish military personnel deployed overseas from those stationed overseas. In addition, estimates might vary significantly depending on sources utilized.[20] Furthermore, when deployments do occur, a Congressional Research Service report showed that estimates of personnel involved might vary significantly depending on definition and source. Thus, estimates of ''boots on the ground'' in Iraq between 2003 and 2008 are only 30 percent to 60 percent of the total involved when personnel outside Iraq are included.[21] Therefore, the Department drew on several data sources to determine the number of servicemembers likely to be called to covered active duty in the Armed Forces annually.

Table 3–1 provides a summary of deployments of the U.S. Armed Forces from 1960 through 2007. Although composed of the best data found to date, some estimates of personnel deployed appear to use more restrictive definitions than would be covered by the Department's definition of covered active duty. For example, the table shows deployment of 1,200 personnel for operations in Lebanon from 1982 through 1984. However, this appears to include only those Marine Corps troops that were on the ground in Lebanon, but excludes sailors on the Navy support ships that were also deployed in this operation.[22]

TABLE 3–1—U.S. DEPLOYMENTS AND TOTAL ACTIVE MILITARY PERSONNEL, 1960–2007

Year	Total active military personnel [b]	Deployed Personnel		Total deployed as percent of total active	Deployment
		Total [a]	Active		
1960	2,490,000	900	900	0.04	Vietnam [c]
1961	2,550,000	3,000	3,000	0.12	

[20] See, for example, the promisingly, but misleadingly, titled: Kane, T. 2004. Global U.S. Troop Deployment, 1950–2003. The Heritage Foundation. October 27. Accessed at *http://www.heritage.org/research/reports/2004/10/global-us-troop-deployment-1950-2003* on October 7, 2010.

[21] Belasco, A. 2009. Troop Levels in the Afghan and Iraq Wars, FY2001–FY2010: Cost and Other Potential Issues. Congressional Research Service. July 2. Accessed at *http://www.fas.org/sgp/crs/natsec/R40682.pdf* on October 7, 2010.

[22] For example, the U.S.S. New Jersey provided offshore fire support during this operation; this ship alone has a crew of about 1,900. Thus, this source may use a ''boots on the ground'' definition.

TABLE 3–1—U.S. DEPLOYMENTS AND TOTAL ACTIVE MILITARY PERSONNEL, 1960–2007—Continued

Year	Total active military personnel [b]	Deployed Personnel		Total deployed as percent of total active	Deployment
		Total [a]	Active		
1962	2,690,000	11,000	11,000	0.41	
1963	2,700,000	16,000	16,000	0.59	
1964	2,690,000	23,000	23,000	0.86	
1965	2,720,000	184,000	184,000	6.76	
1966	3,230,000	385,000	385,000	11.92	
1967	3,410,000	486,000	486,000	14.25	
1968	3,490,000	536,000	536,000	15.36	
1969	3,450,000	475,000	475,000	13.77	
1970	2,980,000	335,000	335,000	11.24	
1971	2,630,000	157,000	157,000	5.97	
1972	2,360,000	24,000	24,000	1.02	
1973	2,230,000	50	50	0.00	
1974	2,160,000				
1975	2,100,000				
1976	2,080,000				
1977	2,070,000				
1978	2,060,000				
1979	2,030,000				
1980	2,050,000				
1981	2,080,000				
1982	2,110,000	10,000	10,000	0.47	Lebanon [e], Grenada [e]
1983	2,120,000	1,200	1,200	0.06	Lebanon [e]
1984	2,140,000	1,200	1,200	0.06	
1985	2,150,000				
1986	2,170,000				
1987	2,170,000				
1988	2,140,000				
1989	2,130,000	27,000	27,000	1.27	Panama [e]
1990	2,050,000				
1991	1,990,000	560,000	476,000	28.14	Iraq (1) [f]
1992	1,810,000	25,800	25,800	1.43	Iraq OSW [f], Somalia [e]
1993	1,710,000	25,800	25,800	1.51	
1994	1,610,000	26,500	26,500	1.65	Somalia [e], Rwanda [e], Haiti [e]
1995	1,520,000	12,200	12,200	0.80	Somalia [e], Haiti [e], Bosnia [e]
1996	1,470,000	9,300	9,300	0.63	Haiti [e], Bosnia [e]
1997	1,440,000	1,400	1,400	0.10	Iraq ONW [f]
1998	1,410,000				
1999	1,390,000	37,100	37,100	2.67	Kosovo [f]
2000	1,380,000				
2001	1,390,000	83,400	83,400	6.00	Afghanistan [d]
2002	1,410,000	21,100	21,100	1.50	
2003	1,430,000	237,600	178,200	16.62	Afghanistan [d], Iraq (2) [g]
2004	1,410,000	236,100	177,100	16.74	
2005	1,380,000	258,900	194,200	18.76	
2006	1,380,000	265,400	199,100	19.23	
2007	1,380,000	285,700	214,300	20.70	
Average	2,102,000	99,200	90,800	4.7	Overall, 1960–2007
	2,140,000	144,000	132,000	6.7	Deployment Years Only

[a] Total deployed personnel is equal to the active personnel plus Reserve and/or National Guard personnel.

[b] Kane, T. 2004. Global U.S. Troop Deployment, 1950–2003. The Heritage Foundation. October 27. Accessed at *http://www.heritage.org/research/reports/2004/10/global-us-troop-deployment-1950-2003* on October 7, 2010.

[c] American War Library. Vietnam War Allied Troop Levels 1960–73. Accessed at: *http://www.americanwarlibrary.com/vietnam/vwatl.htm* on October 7, 2010.

[d] Belasco, A. 2009. Troop Levels in the Afghan and Iraq Wars, FY2001–FY2010: Cost and Other Potential Issues. Congressional Research Service. July 2. Accessed at *http://www.fas.org/sgp/crs/natsec/R40682.pdf* on October 7, 2010.

[e] Sarafino, N.M. 1999. Military Interventions by U.S. Forces from Vietnam to Bosnia: Background, Outcomes, and ''Lessons learned'' for Kosovo. Congressional Research Service. May 20.

[f] U.S. Department of Defense, Deployment Health Clinical Center (DHCC): Deployments by Operation. Accessed at *http://www.pdhealth.mil/dcs/deploy_op.asp* on October 7, 2010.

[g] ''Contingency Tracking System deployment file for Operation Enduring Freedom and Iraqi Freedom, as of: October 31, 2007.'' Accessed at: *http://veterans.house.gov/Media/File/110/2-7-08/DoDOct2007-DeploymentReport.htm.*

OSW (Operation Southern Watch) and ONW(Operation Northern Watch) refer to operations in support of the Iraqi no-fly zones.

Supplementing the deployment data with annual active military personnel counts, the Department estimated the annual number and percent of military personnel deployed on average over the 1960 to 2007 period. Over the entire 48-year period, each year the U.S. deployed on average about 99,200 of its 2.1 million personnel active military force

(4.7 percent) on operations that meet the definition of covered active duty. The overall average covers a wide variation in the timing, duration, and size of those operations; of the 48 years included in Table 3–1, in:

■ 16 years, essentially no personnel were deployed (with the exception of 50 servicemembers in Vietnam in 1973);

■ 18 years, 900 to 37,100 personnel were deployed, an average of 15,400 per year (0.8 percent of active servicemembers);

■ 14 years (Vietnam and the two Iraq conflicts), deployments ranged from 83,400 to 560,000 personnel, an average of 320,400 per year (13.9 percent of active servicemembers).

Finally, with the exception of the Vietnam and second Iraq conflicts, most of the conflicts listed in Table 3–1 were for two years or less.

Based on the information provided in Table 3–1, and acknowledging the limitations of those data, the Department judged that the simple average of 99,200 deployed personnel does not adequately represent the typical number of service personnel on covered active duty in any given year for projecting the costs associated with this rule. The Department also calculated that, on average, 144,000 personnel per year were deployed in the 33 years in which a deployment occurred. Using this figure instead to represent average annual deployments on covered active duty provides a 45 percent cushion to account for data inconsistencies and omissions. Therefore, for the purposes of this PRIA, we assume an average of 144,000 military personnel are deployed per year on covered active duty.

Two additional adjustments to this estimate must be made:

■ Qualifying exigency leave for eligible family members of National Guard and Reserve personnel was promulgated in 2008.

■ Military personnel may deploy more than once in any given year; if their eligible family members use less than the entire allotment of leave on the first deployment (12 weeks), they may use some or all of the remaining leave on subsequent deployments that year.

Data on U.S. military deployments showed that 17 percent of personnel deployed to Iraq in 1991 were Reserve units, while 28 percent of personnel deployed to Iraq between 2003 and 2007 were Reserve or National Guard units.[23] Therefore, the Department adjusted the estimated number of personnel downward by 15 percent for 1991, and 25 percent for 2003 through 2007. Thus, we estimate that on average 132,000 active military personnel per year are deployed on covered active duty.

The Department used a Department of Defense news release on typical deployment lengths in the Iraq conflict by service (Army, 1 year; Navy and Marines, six months; Air Force, 3 months) [24] to estimate the average number of deployments per person. This average was weighted by the relative percent of active personnel by service deployed to Iraq (Army, 61 percent; Navy and Marines, 28 percent; Air Force, 11 percent) [25] to determine that the military would use 1.49 deployments to maintain one person in Iraq for one year. Thus, deployment of 132,000 personnel might require 197,000 actual deployments per year.

In the 2008 final rule, the Department estimated the joint probability that a servicemember will have one or more family members (parent, spouse, or adult child), that those family members will be employed at an FMLA-covered establishment, and that they would be eligible to take FMLA leave under the qualifying exigency provision (see 2007 PRIA and Appendix A). Applying these joint probabilities to the 197,000 annual deployments, the Department estimates approximately 193,000 family members will be eligible to take FMLA leave to address qualifying exigencies. Military deployments represent a nonroutine departure from normal family life to potentially long-term exposure to a high stress, high risk environment, often at relatively short notice. Therefore, the Department assumes the rate at which eligible employees take FMLA leave for this purpose will be twice the rate (about 16 percent) of those taking regular FMLA leave (7.9 percent). The Department does not assert that only 16 percent of family members will take leave for reasons related to the servicemember's deployment, but that 16 percent will use leave designated as FMLA leave for qualifying exigencies. Based on these assumptions, the Department estimates 30,900 family members will take FMLA leave annually to address qualifying exigencies.

In the 2008 final rule, the Department developed a profile of the ''typical'' usage of qualifying exigency leave over the course of a 12-month period for an eligible employee. Under this leave profile, the typical employee will take a one week block of leave upon notification of the deployment of the servicemember, ten days of unforeseeable leave during deployment, one week of foreseeable leave to join the servicemember while on Rest and Recuperation, and one week of foreseeable leave post deployment to address qualifying exigencies. 73 FR 68051. The proposed revisions to the rule increase foreseeable leave to join a servicemember while the servicemember is on Rest and Recuperation leave. Table 3–2 summarizes the revised leave pattern.

TABLE 3–2—PROFILE OF QUALIFYING EXIGENCY LEAVE

Reason	Description	Days	Hours
Notice of Deployment	1 week unforeseeable	5	40
During Deployment	10 days unforeseeable	10	80
During Deployment, ''Rest and Recuperation''	10 days foreseeable	10	80
Post Deployment	1 week foreseeable	5	40
Total		30	240

[23] Belasco, A. 2009. Troop Levels in the Afghan and Iraq Wars, FY2001–FY2010: Cost and Other Potential Issues. Congressional Research Service. July 2. Accessed at *http://www.fas.org/sgp/crs/natsec/R40682.pdf* on October 7, 2010.

''Contingency Tracking System deployment file for Operation Enduring Freedom and Iraqi Freedom, as of: October 31, 2007.'' Accessed at: *http://veterans.house.gov/Media/File/110/2-7-08/DoDOct2007-DeploymentReport.htm.*

[24] DOD News Briefing with Secretary Gates and Gen Pace from the Pentagon. April 11, 2007. Available at URL: *http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=3928.* See also: Powers, R. 2007. ''Joint Chiefs Continue to Examine Deployment Lengths.'' April 14. Accessed at *http://usmilitary.about.com/od/terrorism/a/deploylength.htm.*

[25] ''Contingency Tracking System deployment file for Operation Enduring Freedom and Iraqi Freedom, as of: October 31, 2007.'' Accessed at: *http://veterans.house.gov/Media/File/110/2-7-08/DoDOct2007-DeploymentReport.htm.*

For the purpose of this analysis, the Department is assuming that the average employee will take 10 days of leave to be with their servicemember during rest and recuperation leave. While the Department proposes increasing the number of days of qualifying exigency leave an employee may take for the servicemember's Rest and Recuperation leave to coincide with the number of days provided the servicemember, up to 15 days, the Department does not have a basis at this time to estimate the percentage of servicemembers who would be granted 15 days of Rest and Recuperation or the probability that their family member(s) would join them for Rest and Recuperation leave. Therefore, the Department assumes for the purpose of this analysis that a covered and eligible employee will take 10 days of qualifying exigency leave for the servicemember's Rest and Recuperation leave. The Department invites comment on the amount of Rest and Recuperation leave provided to service personnel and the extent to which employees would take an equal number of days of FMLA-qualifying exigency leave to be with their servicemember-family member.

Based on this profile, the Department estimates that 30,900 eligible employees will take 927,000 days (7.4 million hours) of FMLA leave annually to address qualifying exigencies under the FY 2010 NDAA amendments. These estimates may vary from 772,000 days (6.2 million hours) if eligible employees average five days of leave to 1.1 million days (8.7 million hours) if they average 15 days of leave when a servicemember is on Rest and Recuperation leave.

The Department acknowledges that estimated qualifying exigency leave also represents an average of periods with high levels of deployment and active conflict and periods with low or minimal deployments. Therefore, the Department supplements its analysis by considering a ''heavy conflict'' scenario and a ''low conflict'' scenario to capture the range of leave usage that may be expected in any given year in the future.

Drawing on the data in Table 3–1, for the purposes of these cost estimates, the Department defines the low conflict scenario as a year containing no deployment exceeding 40,000 servicemembers, while the heavy conflict scenario is one in which deployments exceed 40,000 servicemembers. Applying this standard to the data in Table 3–1, the average size of a deployment during the low conflict scenario is 15,400 troops, compared to 320,400 during a period of heavy conflict.

The Department applied the same probabilities of having eligible family members and patterns of leave usage as were used for the average analysis. Using this method, the Department estimates that 2,400 employees will take 72,060 days (576,500 hours) of leave for qualifying exigencies under the low conflict scenario, while 50,244 employees will take 1.5 million days (12 million hours) of leave during periods of heavy conflict.

b. Military Caregiver Leave

Military caregiver leave entitles an eligible employee who is the spouse, son, daughter, parent, or next of kin of a ''covered servicemember'' to take up to 26 workweeks of FMLA leave in a ''single 12-month period'' to care for a covered servicemember with a serious injury or illness. Under the FY 2010 NDAA amendments, the definition of ''covered servicemember'' is expanded to include a veteran ''who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness'' if the veteran was a member of the Armed Forces ''at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.'' The FY 2010 NDAA amendments define a serious injury or illness for a covered veteran as ''a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.''

The amendments also expand the definition of ''serious illness or injury'' to include an injury or illness of a current member of the military that ''existed before the beginning of the member's active duty and was aggravated by service in line of duty'' and that may cause the servicemember to be unable to perform the duties of his or her office, grade, rank, or rating. The Department does not attempt in this analysis to estimate the number of additional current servicemembers who may be covered under this expansion of the definition due to the lack of data to support reasonable assumptions on the potential size of this group. However, for the reasons discussed earlier in this preamble, the Department believes it is reasonable to conclude that the number of servicemembers entering the military with an injury or illness with the potential to be aggravated by service to the point of rendering the servicemember unable to perform the duties of his or her office, grade, rank, or rating is quite small due to the selection process used by the U.S. Armed Forces.

To determine the number of eligible employees that may take FMLA leave as a result of the expansion of caregiver leave to family members of covered veterans, the Department first estimated the number of veterans likely to undergo medical treatment for a serious injury or illness, and the number of family members who are employed by a covered employer and who may be eligible to take FMLA leave to care for them. The Department reviewed several summaries of injuries and illnesses among military servicemembers to estimate the rate at which injuries that are sufficiently severe as to require medical care after separation from the military might occur.[26] A number of data limitations make the estimation of serious injury and illness rates problematic:

■ The Department of Defense generally publishes data on the number of servicemembers killed or wounded in action, but little about non-combat injuries and illnesses.

■ Except for the most severe injuries (*e.g.,* amputations, severe burns, blindness), little is published about the nature or severity of illnesses and injuries.

After completing its review, described below, the Department estimates that an average of about 46,900 servicemembers will incur injuries or illnesses that may require treatment after separation from the military, for which family members will be eligible for military caregiver leave.[27] This number includes the 14,000 servicemembers whose family

[26] The most useful of these sources were:

Dole, R. and D. Shalala. Serve, Support, and Simplify. Report of the President's Commission on Care for America's Returning Wounded Warriors. July, 2007.

Fischer, H. United States Military Casualty Statistics: Operation Iraqi Freedom and Operation Enduring Freedom. CRS Report for Congress. Congressional Research Service, March 25, 2009.

Tanielian, T. and L.H. Jaycox (eds.). Invisible Wounds: Mental Health and Cognitive Care Needs of America's Returning Veterans. Research Highlights. RAND Center for Military Health Policy Research. 2008.

U.S. Department of Defense. DoD Military Injury Metrics Working Group White Paper. December 2002.

[27] For the purposes of describing the calculations in this section, we assume each injury or illness occurs to one veteran (*i.e.,* 46,900 veterans experience 46,900 injuries and illnesses). However, veterans might experience more than one injury or illness, and the family members of fewer than 46,900 veterans might take multiple leaves to care for the 46,900 injuries and illnesses. The total estimated leaves and costs will be identical in both cases.

members are expected to take military caregiver leave while the servicemember is still in the military. The Department reached this estimate based on the information and analysis presented in the following paragraphs.

The Department first estimated the percent of servicemembers that might receive an injury or illness requiring care while in the service or after separation. In 2001, the Department of Veterans Affairs undertook a survey that showed 24 percent of veterans that served during the Gulf War era reported having a service-related disability rating.[28] Service-related disability ratings do not require that the servicemember is disabled; the rating might be less than 30 percent (or even zero in the case of a service-related injury that healed prior to separation;) however, the mere fact that a servicemember has a rating indicates that a service-related injury occurred.[29]

The Department then examined deployment rates across different time periods. Table 3–1 indicates that servicemembers deployed during the Gulf War of 1991 account for about 28 percent of the total active military at that time. The same tables show that servicemembers deployed in Operations Enduring Freedom and Iraqi Freedom (Iraq (2)) comprise a smaller percentage of the active military (roughly 20 percent). However, the Department believes this is an underestimate; because the second Iraq conflict lasted several years, it is likely that many in the active military not deployed at the time of the snapshot were deployed sometime during its duration; conversely, the first Iraq war was relatively brief, and personnel had a smaller likelihood of rotating into the war zone during its duration. Therefore, the Department believes that the percent of active military personnel that were deployed to Afghanistan or Iraq is higher than the calculations in Table 3–1 show, and that the true percent is similar to the first Iraq conflict: approximately 30 percent of active military personnel were deployed. The Department also concludes that the percent of veterans that received a service-connected disability rating from the first Gulf War era is a reasonable proxy for veterans of the period 2003 through 2007, about 25 percent (rounded up from 24 percent). Thus, the Department expects that at least 25 percent of active military personnel in the post-9/11 era will separate from the military with a disability rating.

Data provided by the Department of Veterans' Affairs indicates that among the population of current veterans with a disability rating, 39.3 percent have a rating of 50 percent or greater (Table 3–3). Assuming the distribution of disability ratings among servicemembers who will separate from the military in years to come is the same as the distribution of disability ratings of current veterans, the Department estimates that 10 percent (rounding up, 25 percent × 40 percent = 10 percent) of separating servicemembers will have a disability rating of 50 percent or greater.

TABLE 3–3—2010 DISTRIBUTION OF CURRENT VETERANS BY DISABILITY RATING

Degree of disability (%)	Number of current veterans with DR	Percent of current veterans with DR	Cumulative percent of current veterans with DR
0	12,145	0.4	0.4
10	779,997	24.7	25.1
20	445,472	14.1	39.2
30	365,254	11.6	50.8
40	312,301	9.9	60.7
50	205,419	6.5	67.2
60	246,132	7.8	75.0
70	227,528	7.2	82.2
80	172,491	5.5	87.7
90	97,591	3.1	90.8
100	290,396	9.2	100.0

Source: Department of Veterans Affairs.

However, it is possible that a servicemember may not manifest the symptoms of a serious injury or illness at the time of his or her separation, and therefore, not go through the VA disability rating process prior to leaving the service. In 2008, the RAND organization published a report entitled *Invisible Wounds: Mental Health and Cognitive Care Needs of America's Returning Veterans* (Tanielian and Jaycox, 2008). The RAND report summarized the results from a survey of servicemembers, which found that among servicemembers who returned from Operation Enduring Freedom and Operation Iraqi Freedom:

- 11.2 percent met the criteria for post-traumatic stress disorder (PTSD) or depression,
- 12.2 percent had likely experienced a traumatic brain injury (TBI),
- 7.3 percent had experienced both a TBI and either PTSD or a TBI and depression, and
- Roughly 50 percent of these servicemembers sought treatment for their symptoms within one year of returning from overseas.

Furthermore, symptoms of such injuries may not appear until several years after the injury was experienced, have traditionally been badly underreported, and are not well understood. Due to the high visibility research performed in this area, and recent initiatives undertaken by the Department of Veterans Affairs,[30] it is reasonable to assume a much higher percentage of these types of injuries will be diagnosed and reported than in previous cohorts of veterans.

Consequently, the Department must also account for veterans who may

[28] U.S. Department of Veterans Affairs. 2001 National Survey of Veterans. Accessed at *http://www1.va.gov/VETDATA/docs/SurveysAndStudies/NSV_Final_Report.pdf.*

[29] Veterans Administration Service Related Disability Rating (VASRD). Accessed at *http://myarmybenefits.us.army.mil/Home/Benefit_Library/Federal_Benefits_Page/Veterans_Administration_Schedule_for_Rating_Disabilities_(VASRD).html?serv=150.*

[30] See, for example:

DeKosky, S.T., M.D. Ikonomovic, and S. Gandy. 2010. Traumatic Brain Injury—Football, Warfare, and Long-Term Effects. The New England Journal of Medicine. 363:14. September 30.

U.S. Department of Veterans Affairs. 38 CFR Part 3. Post Traumatic Stress Syndrome. Interim Final Rule. Federal Register, Vol. 73, No. 210, p. 64208.

suffer a serious injury or illness that manifested after his or her separation from the military. Evidence shows that approximately 30 percent of servicemembers that were deployed to Afghanistan and Iraq experienced a TBI, PTSD, or depression, and roughly 30 percent of active military personnel were deployed to Afghanistan or Iraq. Assuming that such injuries would result in the equivalent of a VASRD rating of at least 50 percent, and did not manifest until after separation from the military, it is reasonable to estimate that 10 percent ($0.3 \times 0.3 = 0.09$, then rounding up) of these veterans incurred such an injury or illness that manifested after separation from the military. The Department added this 10 percent of veterans who suffer a post-separation serious injury or illness to the 10 percent of military members who separate from the military with a VASRD rating. Therefore, the estimated percent of veterans likely to have a service-related injury or illness that might require treatment after separation is 20 percent.

In summary, for the purposes of this PRIA, the Department assumes that 20 percent of servicemembers may separate from the military with an injury or illness requiring treatment. This may be an overestimate. We assume that of the additional 10 percent of servicemembers that experience a serious injury or illness that might not manifest until well after the event occurs (*e.g.,* PTSD, TBI, or depression), none go through the VA disability rating process. We also assume that all eventually seek treatment within five years. Both of these assumptions are very conservative.

This estimate suffers from a number of qualifications and limitations:

- This injury rate was based on data for military personnel that had a high likelihood of experiencing active combat while in the military; to the extent that future cohorts experience less combat, the injury rate may well be significantly smaller.
- It is not clear that all injuries included in this figure will be severe enough to require treatment.
- Even if the injury is severe, it is unclear that the servicemember will seek treatment; it has long been known that the treatment rate for mental health conditions such as depression amongst the general population is less than 100 percent.
- This estimate does not account for other injuries that might require treatment; however, the Department could find little data on which to base an estimate of such injuries.
- This estimate abstracts from the requirement that treatment must occur within five years of separation for the injury to be eligible for FMLA caregiver leave. Thus, we implicitly assume 100 percent will seek treatment within five years.

The Department used projections of military personnel separations for fiscal years 2010 through 2036 from the Department of Veterans Affairs as the basis for the average number of personnel who might newly seek medical care in a given year, *see* Table 3–4.[31] We did not model a medical care usage pattern for these servicemembers. Because we project this to be an average annual ''stream'' of cohorts of separating servicemembers, as long as we assume each year's cohort follows the same usage pattern, the primary factor governing the number of servicemembers requiring treatment is the total number in each cohort that will seek treatment within five years.[32]

TABLE 3–4—MILITARY SEPARATIONS 2010–2036 BY BRANCH AND PERIOD

Fiscal year	Separations by Branch [a]						
	Army	Navy	Air Force	Marines	Reserve Forces [b]	Coast Guard [c]	Grand total
FY2010	77,761	46,927	37,053	28,892	48,342	4,391	243,367
FY2011	78,401	46,803	36,979	28,784	28,148	4,523	223,638
FY2012	78,843	46,643	36,876	28,655	18,075	4,649	213,742
FY2013	79,584	46,741	36,976	28,685	8,019	4,798	204,803
FY2014	79,956	46,956	37,160	28,799	8,054	4,820	205,745
FY2015	79,479	46,672	36,948	28,607	8,004	4,790	204,500
FY2016	79,203	46,506	36,830	28,488	7,974	4,773	203,773
FY2017	79,607	46,740	37,028	28,614	8,012	4,796	204,798
FY2018	80,052	46,998	37,245	28,755	8,055	4,822	205,927
FY2019	80,196	47,079	37,322	28,788	8,067	4,830	206,281
FY2020	80,187	47,071	37,327	28,767	8,064	4,829	206,246
FY2021	80,338	47,156	37,407	28,803	8,077	4,837	206,618
FY2022	81,015	47,550	37,731	29,028	8,143	4,877	208,346
FY2023	80,995	47,535	37,730	29,004	8,140	4,875	208,279
FY2024	80,409	47,188	37,466	28,777	8,079	4,839	206,758
FY2025	79,502	46,653	37,052	28,437	7,986	4,784	204,414
FY2026	79,632	46,726	37,121	28,467	7,997	4,791	204,734
FY2027	79,953	46,912	37,278	28,566	8,027	4,810	205,547
FY2028	79,878	46,865	37,251	28,524	8,018	4,805	205,341
FY2029	79,477	46,627	37,072	28,366	7,976	4,780	204,299
FY2030	79,930	46,890	37,291	28,513	8,020	4,807	205,451
FY2031	80,148	47,015	37,401	28,576	8,040	4,819	206,000
FY2032	79,965	46,906	37,323	28,497	8,020	4,808	205,518
FY2033	79,857	46,839	37,279	28,444	8,008	4,800	205,228
FY2034	79,925	46,877	37,318	28,455	8,013	4,804	205,392
FY2035	79,867	46,840	37,298	28,421	8,006	4,800	205,233

[31] U.S. Department of Veterans Affairs. 2008. Demographics: Veteran Population Model 2007. Table 8S. January. Accessed at *http://www1.va.gov/VETDATA/Demographics/Demographics.asp.*

[32] For example, compared to a single cohort separating from the military over 5 years, modeling the separation of that same cohort over 10 years will result in fewer servicemembers from that cohort seeking treatment in any given year. However, modeling separation over 10 years will result in servicemembers from more cohorts seeking treatment in a given year. Thus, in a steady state, the one effect will cancel out the other. Different models of separation patterns will, however, result in different numbers of treatments prior to reaching the steady state, and the net present value of the stream of treatments.

TABLE 3–4—MILITARY SEPARATIONS 2010–2036 BY BRANCH AND PERIOD—Continued

Fiscal year	Separations by Branch [a]						
	Army	Navy	Air Force	Marines	Reserve Forces [b]	Coast Guard [c]	Grand total
FY2036	79,857	46,832	37,301	28,404	8,003	4,799	205,196
Average	.....	.....	.....	.....	.....	.....	207,969

[a] Includes only separations from the five armed services; excludes separations from the Public Health Service (PHS) and National Oceanic and Atmospheric Administration (NOAA).

[b] Reserve Forces include only those who have had active Federal military service (other than for training) as a result of their membership in the reserves or National Guard. Reserve forces with prior active military service in the regular military, are classified according to the branch (Army, Navy, Air Force, Marines) in which they served while in the regular military, notwithstanding their subsequent service in the Reserve Forces.

[c] Coast Guard separations estimated from VETDATA ''Non-Defense'' separations by determining the current proportion of non-defense personnel in the Coast Guard (84.8%) versus NOAA and PHS.

Source: *http://www.va.gov/VETDATA/Demographics/Demographics.asp.*

The Department proposes to define a serious injury or illness of a veteran as an injury or illness incurred in the line of duty on active duty (or a pre-existing injury or illness exacerbated by service) that manifests itself before or after the member became a veteran and is either: a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service Related Disability Rating (VASRD) of 50 percent or higher and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or is a condition which significantly impairs the veteran's ability to secure or follow a substantially gainful occupation. Assuming an annual cohort of 203,000 personnel separate from the military each year, and that 20 percent of those personnel incurred an injury or illness in service that manifests before or after the servicemember became a veteran, the Department estimates that approximately 40,600 military personnel (20 percent of 203,000) per year might have family members who may take FMLA caregiver leave, if the regulatory requirements are met. This estimate may be over-inclusive due to data limitations on the severity of service-related injuries and illnesses.

For the 2008 final rule, the Department estimated 1,500 to 14,000 servicemembers will suffer serious injuries or illnesses that require treatment while in the military, and for which family members will take military caregiver leave. 73 FR 68043. Because military caregiver leave may be used for the same injury when the servicemember is in active duty and again when the servicemember becomes a veteran, the family members of these servicemembers in most instances will be eligible for additional caregiver leave after separation from the military by the servicemember. The economic impact attributable to the first instance of leave was accounted for in the 2008 revisions to FMLA, and this economic analysis will need to account for the possibility that these family members may take additional military caregiver leave when their servicemember becomes a veteran.

To determine the number of servicemembers whose family members may take military caregiver leave when the servicemember is on active duty and again when the servicemember becomes a veteran the Department assumes that 100 percent of the servicemembers will receive treatment while in the military and that about 50 percent will seek treatment as a veteran (*e.g.,* not all the injuries will be severe enough to require treatment beyond active service in the military). In other words, the number of injured servicemembers per year with family that may be eligible for caregiver leave is equal to 1.5 times 26,600 (40,600 less 14,000 already accounted for under the 2008 revisions) new servicemembers per year. In addition, we assume that one-half of 14,000 servicemembers that already received treatment while in the military, under the 2008 revisions, will receive treatment after separation. Therefore, under this revision to the FMLA, servicemembers and veterans may have approximately 46,900 injuries or illnesses per year that result in eligible family members taking military caregiver leave. Using the previously described calculations of the joint probabilities that a servicemember will have one or more family members eligible for FMLA (*see* Appendix A), the Department estimates that those 46,900 veterans and servicemembers will have 59,700 eligible family members who may qualify for FMLA and act as caregivers (*see* Appendix A).[33] The Department assumes that at least 26 percent of eligible employees, or an average of 15,500 per year, will take FMLA leave to care for a veteran undergoing medical treatment for a serious injury or illness. This assumption is based on a survey of injured servicemembers concerning the impact of their needs on their caregivers. The survey found that about 16 percent of working caregivers used ''unpaid leave from their job'' and 10 percent ''cut back their hours'' to care for the servicemember.[34] However, the Department is aware that it is not drawing from a more comprehensive data source and acknowledges the limitations of its estimate. The Department seeks comments on whether there are more complete data sources, or if there are ways to develop a more accurate estimate in the absence of more reliable data, that it could utilize in conducting this part of the analysis.

In the 2008 final rule, the Department developed a profile of the ''typical'' usage of military caregiver leave over the course of a 12-month period for an eligible employee. Under this profile of leave, the typical employee will take a block of four weeks of unforeseeable leave upon notification of the serious injury or illness, a second block of two weeks of unforeseeable leave following

[33] The Department made one modification to the joint probabilities used for caregiver leave. In addition to family members such as parents, spouses, and adult children, designated ''next-of-kin'' are also eligible to take military caregiver leave under FMLA. The Department accounted for this difference by assuming all servicemembers have at least one potential caregiver eligible for FMLA leave.

[34] Christensen et al. Economic Impact on Caregivers of the Seriously Wounded, Ill, and Injured. CNA, April 2009. Available at URL: *http://www.cna.org/documents/D0019966.A2.pdf.*

transfer of the covered servicemember to a rehabilitation facility, two one-week blocks of unforeseeable leave for unanticipated complications, and 40 individual days of foreseeable leave to care for the covered servicemember. 73 FR 68051.

This profile is based on a typical leave pattern of an eligible employee caring for an injured or ill servicemember on active duty; for the purpose of this analysis, the profile was adjusted to capture a likely leave pattern for employees taking leave to care for a covered veteran. In this case, the nature of the serious injury or illness is expected to be different from those encountered during active duty. We assume an injury to an active duty servicemember that results in FMLA caregiver leave is likely to be a sudden, severe injury, which necessitates a large block of leave for the employee to travel to be at the bedside of the injured servicemember. Conversely, ongoing treatment for an existing injury or diagnosis and then treatment of an emerging injury or illness (*e.g.,* post-traumatic stress disorder, traumatic brain injury) might call for frequent but short periods of leave for the employee to take the servicemember to appointments and provide other ongoing support. Adjusting the leave profile to account for these differences generates a leave pattern such as that summarized in Table 3–5.

TABLE 3–5—PROFILE OF MILITARY CAREGIVER LEAVE—VETERANS

Reason	Description	Days	Hours
Diagnosis, therapy, or recuperation	1 week unforeseeable	5	40
Travel to appointments and other errands	50 days foreseeable	50	400
Total		*55*	*440*

Based on this profile, the Department estimates that 15,500 eligible employees will take 854,000 days (6.8 million hours) of FMLA leave annually to act as a caregiver for a veteran who is undergoing treatment for a serious illness or injury.

2. Air Transportation Industry FMLA Leave

The proposed changes to the FMLA eligibility requirements for airline flight crew employees do not alter the number of covered employers in the airline industry but increase the number of pilots, co-pilots, flight attendants and flight engineers who are eligible to take FMLA leave, and as a result, will likely increase the total number of FMLA leaves taken by these employees in the airline industry.[35] The amendment changes flight crew eligibility such that an airline flight crew employee meets the hours of service requirement if, during the previous 12-month period, he or she has worked or been paid for not less than 60 percent of the applicable total monthly guarantee (or its equivalent), and not less than 504 hours, not including personal commute time, or time spent on vacation, medical, or sick leave.

The Department estimated the profile of covered employers in the ''Air Transportation'' industry, the number of flight crew employees who would be eligible for FMLA leave, and the number of leaves they may take. The profile of covered employers, see Table 3–6 below, was developed by estimating the proportion of NAICS code 48 classified as ''Air Transportation'' (NAICS 481) in each size class from the 2006 Statistics of U.S. Businesses at the 6-digit NAICS level. This proportion was multiplied by the total number of establishments, firms, employment and payroll in NAICS 48 according to the 2008 BLS special tabulations. Next, employers with fewer than 50 employees were dropped from the profile; as described below, the Department did not attempt to make an adjustment for establishments with fewer than 50 employees that are owned by firms with more than 50 employees in a 75 mile area for this sub-industry.

TABLE 3–6—2008 COVERED EMPLOYERS IN AIR TRANSPORTATION

Size class (employees)	Number of establish-ments	Employment	Firms	Annual payroll ($1000)	Estimated revenues ($1000)	Estimated net income ($1000)
50 to 99	184	5,098	118	$265,903	$741,840	$4,194
100 to 499	544	16,577	113	919,239	2,369,610	23,342
500+	2,204	439,315	135	24,905,181	70,921,603	2,295,261
Total	2,932	460,990	366	26,090,323	74,033,052	2,322,797

Source: BLS Special Tabulations, 2008; and Statistics of U.S. Businesses, 2006.

Based on conversations with experts in the airline industry, the Department assumes that all potentially eligible airline flight crew employees are employed at a covered worksite. In general, flight crew members are scheduled for flights from a home base, or ''domicile.'' A domicile would not only include the airline flight crew employees, but the non-flight crew employees as well; therefore, the interviewees observed that for most carriers it was very unlikely that airline flight crew employees would be employed at a domicile with fewer than 50 total employees.[36] Next, the Department determined the total number of flight crew members employed in air transportation from the BLS Occupational Employment Statistics for 2008; in 2008 there were

[35] The FAA defines a flightcrew member as ''A pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time.'' See URL: *http://www.faa-aircraft-certification.com/faa-definitions.html.*

[36] Rob DeLucia. 2010. Interview with Rob DeLucia of AIR Conference, Calvin Franz and Lauren Jankovic, both of ERG. Janet Zweber. 2010. Interview with Janet Zweber of U.S. Airways Pilots Association, Calvin Franz and Lauren Jankovic, both of ERG.

about 162,200 airline flight crew employees. This includes pilots, co-pilots, flight engineers, and flight attendants.

The next step was to determine the proportion of those flight crew members who will be eligible for FMLA leave. Crew members who are paid for 50 to 60 hours per month will, over the course of a 12-month period, be paid for 600 to 720 hours and they will easily meet the hours of service required for eligibility under the AFCTCA. According to sample data provided by the industry, about 80 percent of American Airlines flight attendants are paid for 50 or more hours per month, and this is considered reasonably representative of industry patterns.[37] While a similar distribution of paid hours for pilots is not available, the FAA indicates that most pilots are paid for an average of 75 hours per month; based on this observation, the Department assumes that a similar proportion of pilots, 80 percent, would reach the proposed hours of service required for eligibility. Based on these estimates, about 129,760 airline flight crew employees may be eligible to take FMLA leave.

Many airlines have already incorporated FMLA-type provisions in collective bargaining agreements with pilots and flight attendants. In terms of the costs associated with the number of leaves resulting from the proposed changes, it is important to consider the proportion of airline flight crew employees already taking FMLA-type leave under collective bargaining agreements. Based on a review of the current FMLA-type leave policies in the labor contracts for 19 air carriers, the Department finds that about 20 percent of pilots, and 35 to 40 percent of flight attendants are covered and eligible for FMLA-type leave policies.[38] Assuming that 80 percent of pilots and 63 percent of flight attendants are not currently covered by FMLA-type policies, the Department estimates, as outlined in Table 3–7, that, of the 129,760 flight crew members that will be eligible, 90,560 are not already covered by an FMLA-type leave policy under a collective bargaining agreement.

Because there is little information available on the FMLA-type leave usage patterns of flight crew employees, the Department assumes that flight attendants will use FMLA leave at a similar rate to the rest of the population. Based on interviews with experts in the airline industry, pilots (also co-pilots and flight engineers) tend to use less FMLA-type leave due to different demographic needs and the availability of other types of paid leave.[39] The 2008 PRIA extrapolated leave usage rates from surveys of FMLA leave usage to estimate expected leave use among the general population for 2007; the Department further extrapolated this number to estimate an expected leave usage rate of 7.9 percent of eligible employees and applied this rate to the number of eligible flight attendants not covered by a collective bargaining agreement.[40] Given that pilots use less FMLA-type leave, the Department assumed a rate of about 5 percent for eligible pilots and applied that to the estimated number of eligible pilots not covered by a collective bargaining agreement. Based on these estimates and assumptions, just under 6,000 flight attendants, pilots, co-pilots, and flight engineers will take new FMLA leaves under the proposed changes. Assuming that flight crew members will take approximately the same number of leaves per 12-month period as the general population, the Department estimates that each individual will take 1.5 leaves, for a total of 8,930 leaves.[41] Table 3–7 summarizes the estimates developed in this section.

TABLE 3–7—ESTIMATED FMLA USAGE BY FLIGHT CREWS

Flight crew	Number of crew [a]	Number of eligible crew [b]	Eligible crew not covered by CBA FMLA-type policy [c]	Eligible crew, not covered by CBA that will take leave [d]	Number of new FMLA leaves [e]
Pilots	64,800	51,840	41,470	2,070	3,110
Flight Attendants	97,400	77,920	49,090	3,880	5,820
Total	162,200	129,760	90,560	5,950	8,930

Sources: BLS Occupational Employment Statistics, May 2008, Scheduled Air Transportation; CONSAD Research Corporation, December 7, 2007.

[a] Number of pilots includes: pilots, copilots and flight engineers (532011); and commercial pilots (532012).

[b] Eligibility based on estimated proportion of crew members (80%) meeting proposed hours of service requirement.

[c] Based on a sample of CBA for Flight attendants about 35% to 40% are currently covered by an FMLA-type provision such that most are eligible to take leave (we assumed a point estimate of 37% for the calculation); for Pilots about 20% are currently covered by an FMLA-type provision such that they are eligible to take leave.

[d] Flight attendants take leave at same rate as other industries (7.9%); Pilots and other crew use slightly less FMLA leave (5%).

[e] Individuals taking FMLA leave average 1.5 leaves per year.

In developing a proposed method to calculate FMLA-leave usage for airline flight crew employees on reserve status, the Department considered a methodology based solely on the FLSA principles of hours worked, as is typically used for employees other than airline flight crew employees. However, since the airline industry is already tracking and recording airline flight crew employees' hours pursuant to FAA regulations, such as the flight, duty, and rest rules, the Department rejected this option. *See* 14 CFR pt. 91. The Department believes that imposing an FLSA ''hours worked'' methodology on the airline industry would require employers to create another

[37] Table ''AA Flight Attendant Block Hours and Paid Hours'' provided by Interviewee. Rob DeLucia. 2010. Interview with Rob DeLucia of AIR Conference, Calvin Franz and Lauren Jankovic, both of ERG. Table available at URL: *http://www.aanegotiations.com/documents/AAFACharts_7.8.10.pdf;* Last accessed on March 21, 2011.

[38] Based on a review of excerpts from the collective bargaining agreements of 19 airlines transmitted to the Department by Steve Schembs, Association of Flight Attendants—CWA, on January 19, 2010.

[39] Rob DeLucia. 2010. Interview with Rob DeLucia of AIR Conference, Calvin Franz and Lauren Jankovic, both of ERG. Janet Zweber. 2010. Interview with Janet Zweber of U.S. Airways Pilots Association, Calvin Franz and Lauren Jankovic, both of ERG.

[40] The extrapolation is used because the survey was performed relatively soon after FMLA was enacted; over time, as employee knowledge of FMLA provisions has grown, presumably so has FMLA usage.

[41] CONSAD Research Corporation, December 7, 2007.

recordkeeping system, which would be unduly burdensome and costly for employers. As such, the Department did not quantify the cost of this alternative.

D. Costs

This section describes the costs associated with the proposed changes to FMLA, including: regulatory familiarization, employer and employee notices, certifications, and other costs.

1. Regulatory Familiarization

In response to the proposed changes to the FMLA, each employer will need to review the changes and determine what revisions are necessary to their policies, obtain copies of the revised FMLA poster and templates for required notices and certifications, and update their handbooks or other leave-related materials to incorporate the changes (*see* ''General Notice'' below). This is a one-time cost to each employer, calculated as two hours at the loaded hourly wage of a Human Resources (HR) staff member in the airline industry and one hour in all other industries to complete the tasks described above. Industries other than the airline industry will need less time for this task because there is no need for them to review the components of the rule pertaining to flight crews and they are already familiar with the requirements of FMLA. The Department seeks comment on whether two hours for the airline industry and one hour for all other industries are reasonable estimates for employers to review this rule and determine what revisions may need to be made to their employment guides and practices, such as updating company policies and/or timekeeping systems.

2. Employer Notices

Under the FMLA, as described in § 825.300, employers are required to provide certain types of notices to employees regarding FMLA eligibility, employee rights and responsibilities, and employee usage of leave. The estimated time to complete each notice is based on the PRA contained in the final rule. 73 FR 68040.

General Notice. Every covered employer must provide general notice of FMLA coverage to all employees; this notice may be provided in employee handbooks or other benefits and leave materials or as a one-time notice to new employees. For the purpose of this analysis, the cost associated with the proposed changes will be a one-time cost to each employer to update the notice provided and is included under regulatory familiarization costs above.

Eligibility Notice and Rights and Responsibilities Notice. An employer is required to notify an employee of their eligibility to take FMLA leave when an employee requests FMLA leave or the employer becomes aware that an employee's leave may be for an FMLA-qualifying reason. The notice must state whether or not the employee is eligible and, if not, the reason the employee is not eligible. Along with the eligibility notice, the employer must include a discussion of employee rights and obligations, amount of leave designated as FMLA, the applicable 12-month period for leave, certification requirements, and other key details. The cost of these combined notices is calculated as 10 minutes at the loaded hourly wage of an HR staff member to process each notice.

Designation Notice. The employer is required to determine if leave taken by the employee for an FMLA-qualifying reason will be designated and counted as FMLA leave and provide written notice to the employee of this determination. Notice must be provided even if the employer determines that the leave will not be designated as FMLA, and only one notice is required per FMLA reason per 12-month period. The cost of this type of notice is calculated as 10 minutes at the loaded hourly wage of an HR staff member to process each notice.

Certifications

Under the FMLA, as described in § 825.305, employers are allowed to request certification to support an employee's need for FMLA leave due to their own or a family member's serious health condition, the serious injury or illness of a covered servicemember, a qualifying exigency, or to verify an employee's fitness for duty after an absence due to their own health condition.[42] The costs associated with these certifications include: Employer cost to request, review, and verify the certification and employee cost to obtain the certification from the designated authority.

Medical Certification. This type of certification may be requested of employees who take FMLA leave for their own serious health condition or that of a family member and is obtained from the health care provider. This is a recurring cost to both the employee and the employer for each FMLA leave event that is required to have medical certification. The cost to the employee is calculated as the cost of the visit to the health care provider completing the certification, assumed to be approximately $50 per visit.[43] The cost to the employer is 30 minutes at the loaded hourly wage of an HR staff person to review and verify each certification. The proposed changes will only impact the usage of FMLA leave for the employee's own or the employee's family member's serious health condition for flight crew members; for the purposes of this analysis, the additional costs of the proposed changes will only accrue to flight crew members and airline industry employers. (The cost for medical certification for military caregiver leave is discussed below.)

Qualifying Exigency. Employees taking FMLA leave for a qualifying exigency may be asked to provide a copy of the relevant military orders or other documentation, and a copy of Form WH–384 ''Certification of Qualifying Exigency'' to their employers to substantiate their need for leave. This is a recurring cost to the employer for each FMLA qualifying exigency leave for which the employer requires the employee to provide certification. The cost is calculated as 20 minutes at the loaded hourly wage of an HR staff person to review and verify each certification.

Military Caregiver. Employees taking FMLA military caregiver to care for a covered servicemember with a qualifying illness or injury may be asked to provide medical certification of the condition from an authorized health care provider. This is a recurring cost to both the employee and the employer for each FMLA military caregiver leave event that is required to have medical certification. The cost to the employee is calculated as the cost of the visit to the health care provider completing the certification, assumed to be approximately $50 per visit.[44] The cost to the employer is 30 minutes at the loaded hourly wage of an HR staff person to review and verify each certification. For the purposes of this analysis, these costs accrue to employees taking FMLA military caregiver to care for a covered veteran with a qualifying illness or injury and their employers.

Fitness for Duty. For certain occupations, employers may desire certification from a medical professional that an employee is well enough to

[42] An unknown percent of employers require employees to periodically recertify their need for FML. We have no data on the percent of employers that require certification, and believe the percent of employers that require recertification is a small percent of those that require certification. Therefore we have not attempted to estimate the number of employers that require recertification or the costs associated with it; we expect that these costs are small.

[43] CONSAD, December 2007.

[44] CONSAD, December 2007.

fulfill their duties following an FMLA leave for the employee's own serious health condition. Under prescribed circumstances, an employer may request a fitness-for-duty certification. The cost to the employee is calculated as the cost of the visit to the health care provider completing the certification, assumed to be approximately $50 per visit.[45] The cost to the employer is 30 minutes at the loaded hourly wage of an HR staff person to review and verify each certification. For the purposes of this analysis, the additional costs of the proposed changes will only accrue to flight crew members and airline industry employers.

3. Other Employer Costs

The FMLA includes employer recordkeeping requirements but those costs are not addressed here because the proposed changes do not affect the type of records the employer is required to keep nor the amount of time they must keep them. Employers must continue to keep and maintain records under the proposed changes as they are required to do so under the current regulations. Additionally, while the proposed rule does newly cover airline flight crew employees, the Department expects that employers in the airline industry have already been tracking non-flight crew employees' hours to comply with the FMLA. Covered airlines must currently comply with FMLA with respect to employees, such as ticketing agents, baggage handlers, and administrative personnel. As such, the Department does not expect the proposed rule to create any additional recordkeeping burdens on airline employers.

a. *Employee Health Benefits.* Employers are required by FMLA to maintain employee benefits during their absence on FMLA leave. This is a recurring cost to each employer that is calculated as the cost per hour to cover employee health benefits multiplied by the total number of hours of FMLA leave taken. This cost results from additional reasons an employee may take FMLA leave (qualifying exigency, military caregiver), and additional employees entitled to leave (airline flight crew employees). The Department estimated this cost as part of the 2008 final rule and is using the same methodology here, noting that ''the marginal costs related to workers taking * * * military family leave * * * result from the cost of providing health insurance during the period the worker is on leave * * *. The Department believes these * * * costs are reasonable proxies for the opportunity cost of the NDAA provisions, since health insurance coverage represents the marginal compensation an employer is still required to cover under the FMLA when a worker is absent.'' 73 FR 68051. According to the BLS ''Employer Costs for Employee Compensation Survey'' of June 2008, employers spend an average of $2.25 per employee per hour worked on health insurance coverage.[46]

b. *Replacement Workers.* In some businesses, employers are able to redistribute work among other employees while an employee is absent on FMLA leave but in other cases the employer may need to hire temporary replacement workers. This process involves costs resulting from recruitment of temporary workers with needed skill sets, training the temporary workers, and lost or reduced productivity of these workers. The cost to compensate the temporary workers is in most cases offset by the amount of wages not paid to the employee absent on FMLA leave.

In the initial FMLA rulemaking, the Department drew upon available research to suggest that the cost per employer to adjust for workers who are on FMLA leave is fairly small. 58 FR 31810. As in previous rulemakings, the Department is requesting information from businesses on the impact of different strategies for compensating for workers on leave, particularly the extent to which work is redistributed among other workers, and the costs of recruiting and training temporary workers.

For the purpose of this analysis, we will continue to assume that these costs are fairly small; furthermore, most employers subject to this rule change have been implementing FMLA for some time and have already developed internal systems for work redistribution and recruitment and training of temporary workers. The air transportation industry, however, is an exception to this reasoning and employers in this industry may face additional challenges with respect to scheduling.

Due to the nature of the industry, airlines have varied and complex approaches to scheduling airline flight crew employees for flights.[47] Based on seniority, these employees may bid on their desired domicile (*i.e.,* primary airport), equipment (*i.e.,* type of airplane), and flying schedule (*e.g.,* international, shuttle). Generally, the employees can bid a ''line of flying'' or a ''block'' of flights or may bid on a number of days on reserve. According to our interviewees, approximately 15–20 percent of employees may be on reserve at any point in time and this amount fluctuates by airline and demand.[48] There are different types of reserve that are loosely based on the proximity of the employee to the airport; an employee on ''short call'' may be required to arrive at the domicile within 90 minutes, while an employee on ''long call'' may be given 9 hours notice to arrive at the domicile for a flight.

Overall, the scheduling is fairly flexible in order to manage schedule changes; for example, ''block holders'' can be rescheduled to cover additional flights, flight attendants can engage in ''trip trading'' or volunteer for open flying time, and airlines can use ''dead heading'' to fly in a crew from another airport.

There are several key limitations to the flexibility of the system; the primary one being regulatory limits on flying time and equipment. This limitation is the most stringent for pilots who have more restrictive limitations on flying time than other flight crew members and who may only fly specific types of aircraft. Additionally, schedule changes due to events such as severe weather can impact scheduling; reserve flight crew members are utilized to make up for cancelled and rescheduled flights.

At this point, it is not clear if the AFCTCA will impose a significant cost on air transportation employers, nor the potential magnitude of the cost. The Department believes that the rule will increase the number of flight crew leaves classified as FMLA, but may not necessarily increase the absolute number of leaves taken by these workers.

4. Regulatory Impacts

This section draws on the estimates of potentially affected employees, and the unit costs discussed above to determine the anticipated impact of the proposed regulations in terms of total cost across all industries as well as estimated cost per firm and per employee.

a. Projected Regulatory Cost

The total estimated impact of the proposed changes is $72.4 million in the first year with $59.8 million in recurring costs in subsequent years. Table 5–1 summarizes the total estimated costs of the proposed changes to FMLA by cost

[45] CONSAD, December 2007.

[46] BLS Employment Cost Trends, URL: *http://www.bls.gov/ncs/ect/.* Accessed on 09–29–2010.

[47] This discussion is highly generalized and may not represent the practices of a specific airline. The purpose of the discussion is to provide context for understanding the impact of FMLA leave on overall scheduling practices.

[48] Rob DeLucia. 2010. Interview with Rob DeLucia of AIR Conference, Calvin Franz and Lauren Jankovic, both of ERG.

type (first year, recurring), amendment (flight crew, military caregiver), and regulatory requirement (familiarization, notices, certifications, benefits).

TABLE 5–1—SUMMARY OF IMPACT OF PROPOSED CHANGES TO FMLA

Component	Year 1 ($1000)	Year 2 ($1000)
Total	$72,398	$59,791
By Amendment . . .		
Any FMLA revision	12,607	0
Flight Crew Technical Amendment	372	372
NDAA 2010	59,419	59,419
Qualifying Exigency	*25,832*	*25,832*
Military Caregiver	*33,587*	*33,587*
By Requirement . . .		
Regulatory Familiarization	12,607	0
Employer Notices	26,851	26,851
Certifications	722	722
Health Benefits	32,218	32,218

[a] Columns may not sum due to rounding.

All covered employers will incur costs of $12.6 million during the first year for regulatory familiarization associated with any new FMLA revision. Other than the initial regulatory familiarization costs that occur in the first year, all other costs are annual costs; they occur in the first year, and in each subsequent year. Covered employers in the air transportation industry who are not already providing family and medical leave to flight crew employees will incur costs of about $372 thousand per year to implement the changes. Covered employers of workers eligible for military family leave will incur costs of about $59.4 million per year as a result of the proposed changes. Looking at the key requirements of FMLA, most of the costs of the proposed changes will stem from generation of employer notices and maintenance of health benefits in recurring years.

To facilitate the public's understanding of the impact of this proposed rule, the Department provides some alternative assumptions on the utilization of leave and corresponding costs. However, due to the lack of reliable data on which to base alternative assumptions, we do not include these ranges in the summary analysis.

The Department estimates the cost of the NDAA as $59.4 million, with qualifying exigency leave costing $25.8 million and military caregiver leave costing $33.6 million. However, under different scenarios, the cost of the NDAA may increase or decrease. The cost of qualifying exigency leave will vary between $2.6 million and $54.6 million in times of low conflict and high conflict.[49] As a result, the cost of the NDAA will vary from $36.2 million in low conflict times and $88.2 million in high conflict times. The cost of qualifying exigency leave may also change if leave taken for Rest and Recuperation is closer to 5 days or 15 days. Under this scenario, the cost of qualifying exigency leave might range from $23.1 million to $28.6 million, and, thus, the total cost of the NDAA will range from $56.6 million to $62.1 million.

Similarly, if the definition of serious injury or illness was set only to include disability ratings of 60% or greater (*i.e.,* was more stringent), or alternatively to include more ratings of 30% or greater (*i.e.,* was more inclusive), then the cost of military caregiver leave would range from $29.8 million to $44.9 million. As a result, the total cost of the NDAA would vary between $55.7 million and $70.7 million.

Table 5–2 provides the total, net present value and average annualized projected compliance costs over 10 years. Average annualized costs take the entire stream of costs over 10 years, including both first-year costs that are only incurred once, and recurring costs that are incurred every year, and converts them into a stream of equal annual payments with a net present value equal to the original stream of time-varying costs at the specified real discount rate. Calculating annualized costs allows the examination of an appropriate measure of average costs (by accounting for the time-value of money) over time without overestimating impacts by focusing on initial costs, or underestimating impacts by focusing solely on recurring costs. The OMB directs that the streams of costs and benefits should be discounted using a 7 percent real discount rate; we also include the three percent real discount rate for reference.

TABLE 5–2—AVERAGE ANNUALIZED COSTS BY AMENDMENT AND REQUIREMENT

Component	Total ($1000)	Annualized ($1000) [a]	
		Real discount rate 3% ($1000)	Real discount rate 7% ($1000)
Total	$610,517	$61,226	$61,469

[49] In addition, no deployments take place in 16 of the 48 years of data examined (33.3 percent), and costs associated with qualifying exigency leave for deployment would be zero in those years. Low levels of conflict occurred in 18 of 48 years (37.5 percent) and high levels of conflict took place in 14 of 48 years (29.2 percent).

TABLE 5–2—AVERAGE ANNUALIZED COSTS BY AMENDMENT AND REQUIREMENT—Continued

Component	Total ($1000)	Annualized ($1000) [a]	
		Real discount rate 3% ($1000)	Real discount rate 7% ($1000)
By Amendment . . .			
Any FMLA revision	12,607	1,435	1,678
Flight Crew Technical Amendment	3,720	372	372
NDAA 2010	594,190	59,419	59,419
Qualifying Exigency	258,323	25,832	25,832
Military Caregiver	335,868	33,587	33,587
By Requirement . . .			
Regulatory Familiarization	12,607	1,435	1,678
Employer Notices	268,509	26,851	26,851
Certifications	7,221	722	722
Health Benefits	322,181	32,218	32,218

[a] Columns may not sum due to rounding.

The results presented in the table show that the proposed changes are projected to cost an average of $61.4 million per year over 10 years using a 7 percent real discount rate.

With respect to the proposed amendments to the rule, the military family leave provisions (FY 2010 NDAA) account for about 96.7 percent of the total annualized cost. In terms of requirements of the rule, employer notices and maintenance of health benefits each account for about 44 and 52 percent of the total cost, respectively.

b. Impacts of Projected Cost

In this section we review the impact of projected regulatory costs on business income. To avoid misrepresenting impacts, they are presented in four different ways: First year costs are the largest, thus the ratio of first-year costs to income (business and worker) represent the most severe impacts that might be incurred in any one year; the ratio of recurring costs to income are more typical impacts—those that can be expected in any year except the first year; finally, average annualized costs, as described above reflect the overall average over 10 years.

Table 5–3 presents the impact of the projected costs on firm income and payroll with respect to first year and recurring costs; the impacts are disaggregated by proposed amendment and regulatory requirement. The projected first year costs of the proposed rule are about $190 per firm, which is less than one-hundredth of a percent of average annual revenues and payroll. For most firms, the military family leave provisions account for the largest part of this impact, at $156 per firm. With the exception of regulatory familiarization, first year costs for employer notices, certifications, and the maintenance of health benefits are identical to the amounts incurred in each subsequent year. The cost of the flight crew technical amendments may be a small portion of overall first year costs, but the impact will be concentrated on the air transportation industry. As a result, the cost per firm is $1,016, which is less than one-hundredth of a percent of average annual revenues and payroll.

The impact of the recurring costs will be about $157 per firm; the military family leave provisions continue to be the driver of the size of the impact due to the cost of employer notices and maintenance of employee health benefits associated with the requirement.

TABLE 5–3—IMPACT OF COMPLIANCE COSTS ON FIRM INCOME

Component	Costs		Projected impacts	
	Total cost	Cost per firm [a]	Cost per firm as percent of revenues	Cost per firm as a percent of annual payroll
First Year Cost	$72,398	$190	0.0003	0.0015
By Amendment . . .				
Any FMLA revision	12,607	33	0.0001	0.0003
Flight Crew Technical Amendment	372	1,016	0.0004	0.0014
NDAA 2010	59,419	156	0.0003	0.0012
By Requirement . . .				
Regulatory Familiarization	12,607	33	0.0001	0.0003
Employer Notices	26,851	71	0.0001	0.0005
Certifications	722	2	0.0000	0.0000
Health Benefits	32,218	85	0.0001	0.0006
Recurring Cost	59,791	157	0.0003	0.0012
By Amendment . . .				
Any FMLA revision	0	0	0.0000	0.0000
Flight Crew Technical Amendment	372	1,016	0.0004	0.0014
NDAA 2010	59,419	156	0.0003	0.0012
By Requirement . . .				
Regulatory Familiarization	0	0	0.0000	0.0000
Employer Notices	26,851	71	0.0001	0.0005
Certifications	722	2	0.0000	0.0000
Health Benefits	32,218	85	0.0001	0.0006

TABLE 5–3—IMPACT OF COMPLIANCE COSTS ON FIRM INCOME—Continued

Component	Costs		Projected impacts	
	Total cost	Cost per firm [a]	Cost per firm as percent of revenues	Cost per firm as a percent of annual payroll
7% Real Discount Rate	61,469	161	0.0003	0.0013
By Amendment . . .				
Any FMLA revision	1,677	4	0.0000	0.0000
Flight Crew Technical Amendment	372	1,016	0.0004	0.0014
NDAA 2010	59,419	156	0.0003	0.0012
By Requirement . . .				
Regulatory Familiarization	1,677	4	0.0000	0.0000
Employer Notices	26,851	71	0.0001	0.0005
Certifications	722	2	0.0000	0.0000
Health Benefits	32,218	85	0.0001	0.0007

[a] Calculated as total cost divided by the number of affected firms. For example, first year NDAA cost per firm is $59 million divided by 381 thousand firms and first year cost per firm for the flight crew technical amendment is $372 thousand divided by 366 firms.

Table 5–3 also presents the impact of projected costs on firm and worker income for average annualized costs with a 7 percent real discount rate. The results demonstrate that the overall average annualized cost of the rule is $61.5 million, or about $161 per firm ($1,016 per firm in the air transportation industry).

Finally, the impacts presented in Tables 5–3 also show the costs per firm as a percent of firm resources. The Department estimated impacts as the national costs of the rule divided by the number of affected firms (including government entities). The total cost per firm of $161 based on the total annualized cost at a 7 percent discount rate composes approximately 3 ten-thousandths of 1 percent of average annual firm revenue. However, it is likely that some of these costs will be borne by the firm and some by the workers; the exact incidence of these impacts will depend on the relative bargaining strength of firms and workers which will vary by industry.

C. Benefits

The Department anticipates significant benefits resulting from the proposed revisions. Employers that have adopted flexible workplace practices cite many economic benefits such as reduced worker absenteeism and turnover, improvements in their ability to attract and retain workers, and other positive changes that translate into increased worker productivity. ''Work-Life Balance and the Economics of Workplace Flexibility'' at 16, Executive Office of the President, Council of Economic Advisors (March 2010). However, quantifying the benefits is challenging. *Id.* The Department does not attempt to quantify these benefits in this analysis, but does, however, describe the expected benefits of each major revision in the proceeding section.

1. Military Family Leave

The benefits stemming from improving access to military leave for military family members were described in the 2008 final rule as follows:

> [T]he families of servicemembers will no longer have to worry about losing their jobs or health insurance due to absences to care for a covered seriously injured or ill servicemember or due to a qualifying exigency resulting from active duty or call to active duty in support of a contingency operation.

73 FR 68069. Based on the preceding analysis, and the availability of recent research examining the impacts of service-connected injuries and illnesses, the Department also anticipates additional benefits to accrue to servicemembers and their families from the FY 2010 NDAA amendments.

Providing job-protected leave for caregivers of covered veterans under the military caregiver provision is expected to have several benefits, including increased family involvement in recovery, improved self-reliance and access to resources for caregivers, and a reduction in negative outcomes for covered veterans and their families.

Recent research suggests that as many as 30 percent of returning servicemembers may suffer from symptoms of PTSD, major depression, and/or traumatic brain injury. These individuals often suffer from:

- Co-morbitities such as anxiety and mood disorders, and substance abuse,
- Increased risk of suicidal ideation and attempts;
- Higher rates of unhealthy behaviors such as smoking, poor diet, and unsafe sex;
- Higher rates of other health problems and mortality; and
- Decreased work productivity in the form of missed work days and decreased performance at work.[50]

While this study focused on active servicemembers, these disorders involve long timeframes for recovery and management of the symptoms so it is reasonable to conclude that these same issues would impact the servicemember following separation from service. Furthermore, the impact of these disorders, and other serious injuries or illnesses incurred by covered servicemembers and veterans, extends to family members as well. Common issues include marital discord and increased likelihood of divorce, intimate partner violence, poor parenting skills and poor child outcomes, and caregiver burden. In ''Economic Impact on Caregivers of the Seriously Wounded, Ill, and Injured,'' the authors describe the impact on caregivers as follows:

> Family support is critical to patients' successful rehabilitation. Especially in a prolonged recovery, it is family members who make therapy appointments and ensure they are kept, drive the servicemember to these appointments, pick up medications and make sure they are taken, provide a wide range of personal care, become the impassioned advocates, take care of the kids, pay the bills and negotiate with the benefits offices, find suitable housing for a family that includes a person with a disability, provide emotional support, and, in short, find they have a full-time job—or more—for which they never prepared. When family members give up jobs to become caregivers, income can drop precipitously.[51]

[50] Tanielian, Terri and Lisa Jaycox. 2008. Invisible wounds of war: psychological and cognitive injuries, their consequences, and services to assist recovery. RAND. Available for download at URL: *www.rand.org*

[51] Christensen, et. al., April 2009, Economic Impact on Caregivers of the Seriously Wounded, Ill, and Injured, CNA, p. 8.

The support provided by caregivers plays a pivotal role in the course of the servicemember's recovery, as noted in ''Invisible Wounds of War'':

> The likelihood that the condition will trigger a negative cascade of consequences over time is greater if the initial symptoms of the condition are more severe and the afflicted individual has other sources of vulnerability * * * Early interventions are likely to pay long-term dividends in improved outcomes for years to come; so, it is critical to help servicemembers and veterans seek and receive treatment.[52]

Providing caregivers with job-protected FMLA leave to care for their family member who is a covered veteran creates a window of opportunity to interrupt the negative cascade of consequences experienced by sufferers of PTSD, TBI and depression. Furthermore, maintaining the flow of resources and self-sufficiency provided by a secure employment situation ensures that the caregivers are able to maintain their own mental and physical health during the veteran's recovery process.[53]

At this point, there is not sufficient data to accurately estimate the number of servicemembers suffering from these disorders or the range of severity of symptoms; as a result, we are unable to quantify the benefits of reduced rates of negative outcomes for affected veterans and their families. However, in ''Invisible Wounds of War,'' RAND developed estimates of costs associated with PTSD, major depression, and TBI stemming from the conflicts in Afghanistan and Iraq. For example:

- Servicemembers diagnosed with PTSD incur costs of $5,000–10,000 per servicemember during the first two years after returning home.[54]
- Servicemembers diagnosed with major depression incur costs of $15,000—25,000 per servicemember during the first two years after returning home.[55]
- Servicemembers diagnosed with TBI incur costs of $27,000 to 32,000 for a mild case up to $268,000 to 408,000 for severe cases.[56]

The proposed regulatory change will likely reduce these costs, and the costs associated with other negative outcomes associated with these diagnoses; but, at this point in time we do not have sufficient data to estimate the reduction in costs.

2. Airline Industry FMLA Leave

As a result of the proposed changes airline flight crew employees will enjoy all the benefits of FMLA coverage that have been afforded to employees in other industries. Additionally, as discussed in the 2008 final rule, employers may see reduced ''presenteeism''—the loss of productivity due to employees working while injured or ill—and a resultant increase in overall productivity, workplace safety, and wellness among employees. 73 FR 68071.

VI. Small Business Regulatory Enforcement Fairness Act; Regulatory Flexibility

This section describes the analysis of impacts on small entities of the proposed rule. The Regulatory Flexibility Act of 1980 (RFA) requires agencies to prepare regulatory flexibility analyses and make them available for public comment when proposing regulations that will have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. If the rule is not expected to have a significant economic impact on a substantial number of small entities, the RFA allows an agency to certify such, in lieu of preparing an analysis. *See* 5 U.S.C. 605.

The Department has determined that an Initial Regulatory Flexibility Analysis under the RFA is not required for this rulemaking. The FMLA covers private employers of 50 or more employees; employers with fewer than 50 employees are exempt. Moreover, Congress defined, for the purpose of the FMLA, a small business to be one with fewer than 50 employees. Therefore, changes to the FMLA regulations by definition will not impact small businesses.[57] However, in the interest of transparency and to provide an opportunity for public comment, the Department has prepared the following analysis to assess the impact of this regulation on small entities (as defined by the applicable SBA size standards). The Chief Counsel for Advocacy of the Small Business Administration was notified of a draft of this rule upon submission of the rule to the Office of Management and Budget under E.O. 12866.

The Small Business Administration size standard is 500 employees, therefore employers with 50 to 500 employees will be affected by this regulation. Coverage under the FMLA is limited to an estimated 314,752 small employers with 50 to 500 employees. This rule is estimated to cost an average of $190 per firm in the first year, and an average of $157 per firm each year thereafter. *See* Table 5–3. Therefore, this regulation will not have a significant economic impact on any of these small entities. The Department certifies this NPRM is not likely to have a significant economic impact on a substantial number of small entities, and, accordingly, a regulatory flexibility analysis is not required by the RFA.

1. Number of Small Entities

The RFA defines a ''small entity'' as a: (1) Small not-for-profit organization, (2) small governmental jurisdiction, or (3) small business. The Department relied upon standards defined by the Small Business Administration (SBA) to identify firms and governments classified as small. For the purposes of this rulemaking effort, we did not attempt to analyze not-for-profit organizations other than as they appear in the BLS QCEW data used as the basis for the analysis (*e.g.,* not-for-profit hospitals); the estimation of such not-for-profits is therefore included in the estimation of other small firms as described below.

This analysis focuses solely on the costs and impacts of the proposed regulations on small entities and draws on the industry profile described in the E.O. 12866 analysis of this preamble. The Department assumed all firms with fewer than 500 employees are small.

A small governmental jurisdiction is defined as the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. The Department used the field specifying the population of the governmental jurisdiction in the Census of Governments to determine the number of government entities considered small for RFA purposes. All State governments were assumed to be large for RFA purposes.

Applying these size assumptions to the universe of potentially affected firms (Tables 6–1A) we estimate that 83 percent of entities, about 315,000 impacted by the proposed rule meet SBA's criteria for a small entity. Of those, 251,000 are private sector businesses employing about 57 percent of all workers and earning about 57 percent of estimated revenues. The remaining 63,600 are small government entities employing about 11 percent of workers and accruing about 5 percent of all estimated revenues. About 17

[52] Tanielian and Jaycox, 2008.

[53] Christensen, et. al., 2009, p.9.

[54] RAND, 2008, p. xxiii. Variation due to severity and inclusion, or not, of cost of lives lost to suicide. Costs do not include costs due to substance abuse, domestic violence, homelessness, or family strain.

[55] RAND, 2008, p. xxiii. Costs associated with co-morbid PTSD and depression are approximately $12,000 to 16,000.

[56] RAND, 2008, p. xxiii. Costs presented in 2007 dollars.

[57] SBA Office of Advocacy: A Guide for Governmental Agencies—How to Comply with the Regulatory Flexibility Act. June 2010. *http://www.sba.gov/sites/default/files/rfaguide.pdf.*

percent of private businesses and government agencies are non-small for RFA purposes. These entities employ more than 32 percent of workers, pay 64 percent of wages, and earn 39 percent of annual revenues.

TABLE 6–1A—COVERED FIRMS AND WORKERS BY SBA SIZE STANDARDS

Industry	Number and percent of establishments		Number and percent of employment		Number and percent of firms	
Small						
Private	1,051,716	*84*	52,113,983	*57*	251,134	*66*
Government	127,235	*10*	10,085,977	*11*	63,617	*17*
Subtotal	1,178,951	*94*	62,199,960	*68*	314,751	*83*
Non Small						
Private	16,436	*1*	19,646,940	*22*	40,025	*11*
Government	52,717	*4*	9,299,992	*10*	25,909	*7*
Subtotal	69,153	*6*	28,946,932	*32*	65,934	*18*
Total						
Private	1,068,152	*86*	71,760,923	*79*	291,159	*76*
Government	179,952	*14*	19,385,969	*21*	89,526	*24*
Total	1,248,104	*100*	91,146,892	*100*	380,685	*100*

Industry	Annual Payroll ($mil.) and percent of total		Estimated 2008 revenues ($mil.) and percent of total		Estimated 2008 net income ($mil.) and percent of total	
Small						
Private	$1,375,524	*28*	$13,423,633	*57*	$304,497	*30*
Government	395,610	*8*	1,092,309	*5*	26,180	*3*
Subtotal	1,771,134	*36*	14,515,943	*61*	330,677	*32*
Non Small						
Private	2,823,743	*57*	6,763,222	*29*	319,226	*31*
Government	374,268	*8*	2,444,202	*10*	375,124	*37*
Subtotal	3,198,011	*64*	9,207,424	*39*	694,349	*68*
Total						
Private	4,199,267	*85*	20,186,856	*85*	623,723	*61*
Government	769,878	*15*	3,536,511	*15*	401,304	*39*
Total	4,969,145	*100*	23,723,367	*100*	1,025,0267	*100*

Table 6–1B presents the number of affected entities for the air transportation industry. While 63 percent of firms are small by SBA standards, the 37 percent of firms that are not small account for 75 percent of establishments, 95 percent of employees and payroll, 96 percent of revenues and 99 percent of net income.

TABLE 6–1B—AIR TRANSPORTATION INDUSTRY (NAICS 481) COVERED FIRMS AND WORKERS BY SBA STANDARDS

Industry	Number and percent of establishments		Number and percent employment		Number and percent of firms	
Small	728	25	25,004	5	231	63
Non Small	2,204	75	506,796	95	135	37
Total	2,932	100	531,800	100	366	100

TABLE 6–1B-CONTINUED—PAYROLL, REVENUE, AND INCOME OF AIR TRANSPORTATION INDUSTRY COVERED FIRMS BY SBA SIZE STANDARDS

Industry	Annual payroll ($mil.) and percent of total		Estimated revenues ($mil.) and percent of total		Estimated net income ($mil.) and percent of total	
Small	$1,185	5	$4,321	4	$38	1
Non Small	24,905	95	98,496	96	3,188	99
Total	26,090	100	102,817	100	3,226	100

2. Cost to Small Entities

Table 6–2A summarizes estimated first-year, recurring, and annualized compliance costs attributable to the proposed rule for both small and non-small businesses. Among all entities (both business and government) potentially affected by the proposed rule 83 percent are small for the purposes of the RFA. *See* Table 6–1A. They are projected to incur about 71 percent of first-year costs, 68 percent of recurring costs, and 68 percent of average annualized costs. *See* Table 6–2A. In the air transportation industry, small entities account for 8 percent of first-year costs, 5 percent of recurring costs, and 5 percent of average annualized costs although they compose 63 percent of firms. *See* Table 6–2B.

TABLE 6–2A—COMPLIANCE COSTS BY BUSINESS SIZE [a]

Industry	First year ($1000) and percent of total		Recurring ($1000) and percent of total		Annualized ($1000) and percent of total	
Small						
Private	$40,716	*56*	$33,981	*57*	$34,877	*57*
Government	9,994	*14*	6,585	*11*	7,039	*11*
Subtotal	50,709	*70*	40,566	*68*	41,916	*68*
Non Small						
Private	14,048	*19*	12,972	*22*	13,116	*21*
Government	7,652	*11*	6,264	*10*	6,449	*11*
Subtotal	21,689	*30*	19,225	*32*	19,553	*32*
Total						
Private	54,764	*76*	46,954	*79*	47,993	*78*
Government	17,646	*24*	12,849	*22*	13,487	*22*
Total	72,398	*100*	59,791	*100*	61,469	*100*

[a] Column totals may not sum due to rounding.

TABLE 6–2B—AIR TRANSPORTATION INDUSTRY (NAICS 481) COMPLIANCE COSTS BY BUSINESS SIZE

Industry	First year and percent of total ($1000)		Recurring and percent of total ($1000)		Annualized and percent of total ($1000)	
Small	$30	*8*	$17	*5*	$19	*5*
Non Small	362	*92*	355	*95*	355	*95*
Total	392	*100*	372	*100*	375	*100*

Small entities constitute the substantial majority of affected entities and are projected to incur the majority of compliance costs; however, they do not bear a disproportionate share of projected costs, nor will those costs result in a significant economic impact on those small entities. First-year costs of the rule are the largest costs incurred by all entities, but these average less than $200 for small firms in the private sector and for small government entities. *See* Table 6–3A. Estimated compliance costs per firm for small firms do not compose a higher percentage of firm revenues than for large firms, and in no case does that cost exceed 0.01 percent of firm revenues. For small air transportation firms, the cost per firm is smaller than the overall average (*see* Table 6–3B); for non-small firms, cost per firm is larger than the overall average, but still composes one ten-thousandth of a percent of annual revenues.

TABLE 6–3A—COMPLIANCE COSTS PRESENTED AS COST PER FIRM AND COST AS A PERCENT OF FIRM INCOME, BY SBA SIZE STANDARDS

Industry	First year		Recurring		Annualized	
	Cost per firm	Cost as percent of income	Cost per firm	Cost as percent of income	Cost per firm	Cost as percent of income
Small						
Private	$162	*0.00000*	$135	*0.00000*	$139	*0.00000*
Government	157	*0.00001*	104	*0.00000*	111	*0.00000*
Subtotal	161	*0.00000*	129	*0.00000*	133	*0.00000*
Non Small						
Private	351	*0.00000*	324	*0.00000*	328	*0.00000*
Government	295	*0.00000*	242	*0.00000*	249	*0.00000*
Subtotal	329	*0.00000*	292	*0.00000*	297	*0.00000*
Total						
Private	188	*0.00000*	161	*0.00000*	165	*0.00000*
Government	197	*0.00000*	144	*0.00000*	151	*0.00000*

TABLE 6–3A—COMPLIANCE COSTS PRESENTED AS COST PER FIRM AND COST AS A PERCENT OF FIRM INCOME, BY SBA SIZE STANDARDS—Continued

Industry	First year		Recurring		Annualized	
	Cost per firm	Cost as percent of income	Cost per firm	Cost as percent of income	Cost per firm	Cost as percent of income
Total	190	*0.00000*	157	*0.00000*	161	*0.00000*

TABLE 6–3B—COMPLIANCE COSTS TO AIR TRANSPORTATION PRESENTED AS COST PER FIRM AND COST AS A PERCENT OF FIRM INCOME, BY SBA SIZE STANDARDS

Industry	First year		Recurring		Annualized	
	Cost per firm	Cost as percent of income	Cost per firm	Cost as percent of income	Cost per firm	Cost as percent of income
Small	$129	0.0003	$76	0.0002	$83	0.0002
Non Small	2,674	0.0001	2,621	0.0001	2,628	0.0001
Total	1,070	0.0000	1,016	0.0000	1,023	0.0000

In summary, although the potential impacts of the proposed rule are larger for small firms when measured as the absolute cost per firm or employee, or as a percent of firm revenues or employee wages, small firms do not bear a disproportionate burden under this rule. Therefore, the Department believes that the proposed rule will not have a significant economic impact on a substantial number of small entities. Furthermore, as noted above, Congress defined ''small business'' for the purpose of the FMLA as one employing fewer than 50 employees and the proposed regulation therefore, by definition, does not impact small entities. However, using SBA's size standard of 500 employees to define ''small business'', an estimated 314,752 employers with 50 to 500 employees are covered by the FMLA, this rule is only estimated to cost an average of $161 per small firm in the first year, and an average of $129 per small firm each year thereafter. This regulation will not have a significant economic impact on any of these small entities. Therefore, the Department has determined and certified that this rule will not have a significant economic impact on a substantial number of small entities.

Appendix A: Military Family Leave Profile

In order to estimate the number of individuals who may take leave under the qualifying exigency or military caregiver provisions as a result of the proposed changes, the Department estimated (1) the number of active duty servicemembers whose family members are entitled to qualifying exigency leave and the number of veterans whose family members will be entitled to caregiver leave, (2) the age profile of those servicemembers and veterans, and (3) the number of eligible family members or caregivers associated with that age profile. The first estimate is described earlier in this preamble. This appendix provides an explanation of the method used to develop the age profiles and eligible family members.

Overview of Approach

The Department attempted to replicate the method used in the CONSAD 2007 report to ensure consistency with previous estimates.[58] In that report, CONSAD used data from the Defense Manpower Database, the Current Population Survey, and the decennial Census of Population to estimate the age distribution of servicemembers; the proportion of servicemembers in each age category with living parents, a spouse, and children (over 18 years of age);[59] and the proportion of those individuals who may be employed by a covered employer. The Department used these estimates to determine the likely number of family members eligible to take leave for a qualifying exigency or to act as a caregiver for a covered veteran.

The first step is to apply the age profile of servicemembers to the estimated number of servicemembers to distribute the number of servicemembers to the age groups. Table A–1 presents the estimated proportion of servicemembers by age range estimated by CONSAD. The Department aggregated the age groups for this calculation. For example, if the proposed rule was expected to affect 100 servicemembers then this age profile would estimate that 47 of them would be between the ages of 22 and 30 years old.

TABLE A–1—AGE PROFILE OF SERVICEMEMBERS

General military servicemember age range	Average estimated proportion of military members (percent)
18–21	19.9
22–30	47.0
31–40	24.8
41–50	8.0
51–59	0.6

The next step is to estimate the number of servicemembers in each age group with 0, 1, 2, 3, 4, or 5 eligible family members. Table A–2 presents the estimated number of eligible family members by age range of the servicemember.

[58] CONSAD 2007. Appendix A.

[59] Under military caregiver leave a designated ''next of kin'' may also take leave to care for a covered veteran. We accounted for these individuals by assuming that every covered veteran has at least one caregiver.

TABLE A–2—PROPORTION OF SERVICEMEMBERS WITH "N" ELIGIBLE FAMILY MEMBERS

General military servicemember age range	Proportion of servicemembers with n eligible family members, where n =					
	0 (%)	1 (%)	2 (%)	3 (%)	4 (%)	5 (%)
18–21	29.32	49.5	21.0	0.2	0.0	0.0
22–30	27.38	46.5	23.3	2.8	0.0	0.0
31–40	31.08	44.1	21.1	3.6	0.2	0.2
41–50	37.78	40.4	16.9	4.2	0.7	0.1
51–59	45.25	35.4	14.6	3.9	0.7	0.1

Finally, the number of estimated eligible family members for each age group of servicemembers is summed up by multiplying the number of servicemembers in each column by the number of eligible family members. For example, for each age group the calculation is (# × 0) + (# × 1) + (# × 2) + (# × 3) + (# × 4) + (# × 5). Next, the total number of eligible family members is summed across the age groups to estimate the total number of eligible family members.

The following sections illustrate this method for the calculation of the number of eligible family members who may take qualifying exigency leave, and the number of eligible family members who may take leave to act as a military caregiver for a covered veteran.

Qualifying Exigency Leaves

Table A–3 presents the calculation of the projected number of servicemembers in each age category based on the estimated average number of covered military members and age profile of military members.

TABLE A–3—ESTIMATED AGE PROFILE OF SERVICEMEMBERS ON COVERED ACTIVE DUTY

General military servicemember age range	Total average number of military members	Average estimated proportion of military members by age range (percent)	Projected number of servicemembers on covered active duty per year
18–21	197,000	19.9	39,203
22–30	197,000	47.0	92,590
31–40	197,000	24.8	48,856
41–50	197,000	8.0	15,760
51–59	197,000	0.6	1,182

Table A–4 presents the calculation of the number of eligible family members of servicemembers in each age group; this combines the projected number of servicemembers from Table A–3 with the distribution of family members presented in Table A–2.

TABLE A–4—ESTIMATED NUMBER OF ELIGIBLE FAMILY MEMBERS OF SERVICEMEMBERS BY AGE RANGE

Age range	Projected number of servicemembers	Number of eligible family members						Total number of eligible family members
		0	1	2	3	4	5	
18–21	39,203	11,492	19,386	8,233	92.1	0	0	36,128
22–30	92,590	25,353	43,086	21,533	2,615	0	0	93,996
31–40	48,856	15,184	21,545	10,331	1,750	85.5	9.8	47,848
41–50	15,760	5,954	6,362	2,656	657	116	16.5	14,190
51–59	1,182	535	419	172	46.5	8.39	1.18	942
Total	197,591	58,519	90,798	42,924	5,161	210	28	193,104

Military Caregiver Leaves

Table A–5 presents the calculation of the projected number of servicemembers in each age category based on the estimated average number and age profile of servicemembers and covered veterans.

TABLE A–5—ESTIMATED AGE PROFILE OF SERVICEMEMBERS AND COVERED VETERANS WITH SERIOUS INJURY OR ILLNESS

General military servicemember age range	Total average number of military members	Average estimated proportion of military members by age range percent)	Projected number of servicemembers with serious injury or illness per year
18–21	92,500	19.8	18,352
22–30	92,500	46.9	43,345
31–40	92,500	24.7	22,871
41–50	92,500	8.0	7,378
51–59	92,500	0.6	553

Table A–6 presents the calculation of the number of eligible caregivers of servicemembers in each age group; this combines the projected number of servicemembers from Table A–5 with the distribution of family members presented in Table A–2 with one difference. Under military caregiver leave we assume that each covered servicemember has at least one caregiver; so, the servicemembers in the category ''0'' caregivers are assumed to have at least 1 caregiver.

TABLE A–6—ESTIMATED NUMBER OF ELIGIBLE CAREGIVERS OF SERVICEMEMBERS BY AGE RANGE

Age range	Projected number of service members	Number of eligible family members						Total number of eligible family members
		0	1	2	3	4	5	
18–21	18,352	5,380	9,075	3,854	43.1	0	0	22,293
22–30	43,345	11,869	20,170	10,080	1,224	0	0	55,872
31–40	22,871	7,108	10,086	4,836	819	40.0	4.6	29,508
41–50	7,378	2,787	2,978	1,243	308	54	7.7	9,430
51–59	553	250	196	81	21.7	3.93	0.55	691
Total	92,500	27,395	42,506	20,094	2,416	98	13	117,794

VII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments as well as on the private sector. Under Section 202(a) of UMRA, the Department must generally prepare a written statement, including a cost-benefit analysis, for proposed and final regulations that ''includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate or by the private sector'' in excess of $100 million in any one year (equivalent to $143 million in 2010 dollars after adjusting for inflation).

State, local, and tribal government entities are within the scope of the regulated community for this proposed regulation. The Department has determined that this rule contains a Federal mandate that is unlikely to result in expenditures of $143 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Total costs to government entities do not exceed $25 million in any single year of the rule (*see* Table 7–2A). Total costs to the private sector do not exceed $53 million in the first, most costly year of the rule. *See* Table 7–2A. The total first year cost of this rule is estimated at $72.4 million to the private and public sectors combined. Thus, the proposed rule is not expected to result in any expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year.

VIII. Executive Order 13132, Federalism

The proposed rule does not have federalism implications as outlined in E.O. 13132 regarding federalism. Although States are covered employers under the FMLA, the proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

IX. Executive Order 13175, Indian Tribal Governments

This proposed rule was reviewed under the terms of E.O. 13175 and determined not to have ''tribal implications.'' The proposed rule does not have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' As a result, no tribal summary impact statement has been prepared.

X. Effects on Families

The undersigned hereby certifies that this proposed rule will not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

XI. Executive Order 13045, Protection of Children

E.O. 13045 applies to any rule that (1) is determined to be ''economically significant'' as defined in E.O. 12866, and (2) concerns an environmental health or safety risk that the promulgating agency has reason to believe may have a disproportionate effect on children. This proposal is not subject to E.O. 13045 because although the rule addresses family and medical leave provisions of the FMLA including the rights of employees to take leave for the birth or adoption of a child and to care for a healthy newborn or adopted

child, and to take leave to care for a son or daughter with a serious health condition, it does not concern environmental health or safety risks that may disproportionately affect children.

XII. Environmental Impact Assessment

A review of this proposal in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.;* the regulations of the Council on Environmental Quality, 40 CFR part 1500 *et seq.;* and the Departmental NEPA procedures, 29 CFR part 11, indicates that the proposed rule will not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

XIII. Executive Order 13211, Energy Supply

This proposed rule is not subject to E.O. 13211. It will not have a significant adverse effect on the supply, distribution or use of energy.

XIV. Executive Order 12630, Constitutionally Protected Property Rights

This proposal is not subject to E.O. 12630, because it does not involve implementation of a policy ''that has takings implications'' or that could impose limitations on private property use.

XV. Executive Order 12988, Civil Justice Reform Analysis

This proposed rule was drafted and reviewed in accordance with E.O. 12988 and will not unduly burden the Federal court system. The proposed rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

List of Subjects in 29 CFR Part 825

Employee benefit plans, Health, Health insurance, Labor management relations, Maternal and child health, Teachers.

Signed at Washington, DC, this 30th day of January, 2012.

Nancy J. Leppink,

Deputy Administrator, Wage and Hour Division.

For the reasons set out in the preamble, the Department of Labor proposes to amend Title 29 part 825 of the Code of Federal Regulations as follows:

1. The authority citation for part 825 continues to read as follows:

Authority: 29 U.S.C. 2654

Subpart A—Coverage Under the Family and Medical Leave Act

2. Amend § 825.100 by revising the first and second sentences of paragraph (a) to read as follows:

§ 825.100 The Family and Medical Leave Act.

(a) The Family and Medical Leave Act of 1993, as amended, (FMLA or Act) allows ''eligible'' employees of a covered employer to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks in any 12 months (*see* § 825.200(b)) because of the birth of a child and to care for the newborn child, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, because the employee's own serious health condition makes the employee unable to perform the functions of his or her job, or because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status. In addition, ''eligible'' employees of a covered employer may take job-protected, unpaid leave, or substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 26 workweeks in a ''single 12-month period'' to care for a covered servicemember with a serious injury or illness. * * *

* * * * *

3. Amend § 825.101 by revising the first sentence of paragraph (a) to read as follows:

§ 825.101 Purpose of the Act.

(a) FMLA is intended to allow employees to balance their work and family life by taking reasonable unpaid leave for medical reasons, for the birth or adoption of a child, for the care of a child, spouse, or parent who has a serious health condition, for the care of a covered servicemember with a serious injury or illness, or because of a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status. * * *

* * * * *

4. Amend § 825.107 by revising the last sentence of paragraph (c) to read as follows:

§ 825.107 Successor in interest coverage.

* * * * *

(c) * * * A successor which meets FMLA's coverage criteria must count periods of employment and hours of service with the predecessor for purposes of determining employee eligibility for FMLA leave.

5. Amend § 825.110 by:

a. revising paragraph (a)(2);

b. revising the first and third sentences of paragraph (b)(2)(i);

c. revising the first sentence of paragraph (c)(1);

d. adding new paragraph (c)(2);

e. re-designating current paragraph (c)(2) as (c)(3);

f. revising the first sentence of newly designated paragraph (c)(3);

g. re-designating current paragraph (c)(3) as (c)(4);

h. revising newly designated (c)(4); and

i. revising paragraph (d)

to read as follows:

§ 825.110 Eligible employee.

(a) * * *

(2) Has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave (*see* § 825.110(c)(2) for special hours of service requirements for airline flight crew employees), and

* * * * *

(b) * * *

(2) * * *

(i) The employee's break in service is occasioned by the fulfillment of his or her Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, *et seq.,* qualifying military service obligation. * * * However, this section does not provide any greater entitlement to the employee than would be available under USERRA; or * * *

* * * * *

(c)(1) Except as provided in paragraph (c)(2) and (3) of this section, whether an employee has worked the minimum 1,250 hours of service is determined according to the principles established under the Fair Labor Standards Act (FLSA) for determining compensable hours of work. * * *

(2) Whether an airline flight crew employee meets the hours of service requirement is determined by assessing the number of hours the employee has worked or been paid over the previous 12 months. An airline flight crew employee will meet the hours of service requirement during the previous 12-month period if he or she has worked or been paid for not less than 60 percent of the employee's applicable monthly guarantee and has worked or been paid for not less than 504 hours.

(i) The applicable monthly guarantee for an airline flight crew employee who is not on reserve status is the minimum number of hours for which an employer has agreed to schedule such employee for any given month. The applicable monthly guarantee for an airline flight crew employee who is on reserve status is the number of hours for which an employer has agreed to pay the employee for any given month

(ii) The hours an airline flight crew employee has worked for purposes of the hours of service requirement is the employee's duty hours during the previous 12-month period. The hours an airline flight crew employee has been paid is the number of hours for which an employee received wages during the previous 12-month period. The 504 hours do not include personal commute time or time spent on vacation, medical, or sick leave.

(3) An employee returning from his or her USERRA qualifying military service shall be credited with the hours of service that would have been performed *but for* the period of military service in determining the employee's eligibility for FMLA-qualifying leave. * * *

(4) In the event an employer does not maintain an accurate record of hours worked by an employee (or hours paid, in the case of an airline flight crew employee), including for employees who are exempt from FLSA's requirement that a record be kept of their hours worked (*e.g.,* bona fide executive, administrative, and professional employees as defined in FLSA regulations, 29 CFR part 541), the employer has the burden of showing that the employee has not worked the requisite hours. An employer must be able to clearly demonstrate, for example, that full-time teachers (*see* § 825.102 for definition) of an elementary or secondary school system, or institution of higher education, or other educational establishment or institution (who often work outside the classroom or at their homes) did not work 1,250 hours during the previous 12 months in order to claim that the teachers are not eligible for FMLA leave. Similarly, an employer must be able to clearly demonstrate that airline flight crew employees have not ''worked or been paid'' for 60 percent of their applicable monthly guarantee or for 504 hours during the previous 12 months in order to claim that the airline flight crew employees are not eligible for FMLA leave.

(d) The determination of whether an employee meets the hours of service requirement and has been employed by the employer for a total of at least 12 months must be made as of the date the FMLA leave is to start. An employee may be on ''non-FMLA leave'' at the time he or she meets the 12-month eligibility requirement, and in that event, any portion of the leave taken for an FMLA-qualifying reason after the employee meets the eligibility requirement would be ''FMLA leave.'' (*See* § 825.300(b) for rules governing the content of the eligibility notice given to employees.)

* * * * *

6. Amend § 825.112 by revising paragraph (a)(5) and (a)(6) to read as follows:

§ 825.112 Qualifying reasons for leave, general rule.

(a) * * *

(5) Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status (*see* §§ 825.122 and 825.126); and

(6) To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember (*see* §§ 825.122 and 825.127).

* * * * *

7. Amend § 825.122 by:

a. revising the section heading;

b. replacing ''active duty'' with ''covered active duty'' in each instance that it appears in the heading and this section;

c. re-designating current paragraphs (a) through (j) as (b) through (k)

d. adding new paragraph (a); and

e. revising the last sentence in paragraph (h)

The additions and revisions read as follows:

§ 825.122 Definitions of covered servicemember, spouse, parent, son or daughter, next of kin of a covered servicemember, adoption, foster care, son or daughter on covered active duty or call to covered active duty status, son or daughter of a covered servicemember, and parent of a covered servicemember.

(a) Covered servicemember. *Covered servicemember* means

(1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(2) A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness. ''Covered veteran'' means an individual who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date of the employee's military caregiver leave.

* * * * *

(h) * * * *See* § 825.126(a)(5).

* * * * *

7. Revise § 825.126 to read as follows:

§ 825.126 Leave because of a qualifying exigency.

(a) Eligible employees may take FMLA leave for a qualifying exigency while the employee's spouse, son, daughter, or parent (the ''military member'' or ''member'') is on covered active duty or call to covered active duty status.

(1) ''Covered active duty or call to covered active duty status'' in the case of a member of the Regular Armed Forces means duty under a call or order to active duty (or notification of an impending call or order to covered active duty) during the deployment of the member with the Armed Forces to a foreign country. The active duty orders of a member of the Regular components of the Armed Forces will generally specify if the member is deployed to a foreign country.

(2) ''Covered active duty or call to covered active duty status'' in the case of a member of the Reserve components of the Armed Forces means duty under a call or order to active duty (or notification of an impending call or order to active duty) during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to: Section 688 of Title 10 of the United States Code, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least 20 years of active service; Section 12301(a) of Title 10 of the United States Code, which authorizes ordering all reserve component members to active duty in the case of war or national emergency; Section 12302 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty; Section 12304 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty; Section 12305 of Title 10 of the United States Code, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve

components; Section 12406 of Title 10 of the United States Code, which authorizes calling the National Guard into Federal service in certain circumstances; Chapter 15 of Title 10 of the United States Code, which authorizes calling the National Guard and State military into Federal service in the case of insurrections and national emergencies; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation. *See* 10 U.S.C. 101(a)(13)(B).

(i) For purposes of covered active duty or call to covered active duty status, the Reserve components of the Armed Forces include the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation pursuant to one of the provisions of law identified in paragraph (a)(2).

(ii) The active duty orders of a member of the Reserve components will generally specify if the military member is serving in support of a contingency operation by citation to the relevant section of Title 10 of the United States Code and/or by reference to the specific name of the contingency operation and will specify that the deployment is to a foreign country.

(3) ''Deployment of the member with the Armed Forces to a foreign country'' means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters.

(4) A call to covered active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States pursuant to one of the provisions of law identified in paragraph (a)(2) of this section.

(5) A ''son or daughter on covered active duty or call to covered active duty status'' means the employee's biological, adopted, or foster child, stepchild, legal ward, or child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age.

(b) An eligible employee may take FMLA leave for one or more of the following qualifying exigencies:

(1) *Short-notice deployment.*

(i) To address any issue that arises from the fact that the military member is notified of an impending call or order to covered active duty seven or less calendar days prior to the date of deployment;

(ii) Leave taken for this purpose can be used for a period of seven calendar days beginning on the date the military member is notified of an impending call or order to covered active duty;

(2) *Military events and related activities.*

(i) To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of the military member; and

(ii) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of the military member;

(3) *Childcare and school activities.* For purposes of leave for the childcare and school activities listed in paragraphs (b)(3)(i) through (iv) of this section, a child of the military member must be the military member's biological, adopted, or foster child, stepchild, legal ward, or child for whom the military member stands in loco parentis, who is either under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence. As with all instances of qualifying exigency leave, the military member must be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.

(i) To arrange for alternative childcare for a child of the military member when the covered active duty or call to covered active duty status of the military member necessitates a change in the existing childcare arrangement;

(ii) To provide childcare for a child of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;

(iii) To enroll in or transfer to a new school or day care facility a child of the military member when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and

(iv) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a child of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member;

(4) *Financial and legal arrangements.*

(i) To make or update financial or legal arrangements to address the military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and

(ii) To act as the military member's representative before a Federal, State, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the military member's covered active duty status;

(5) *Counseling.* To attend counseling, provided by someone other than a health care provider, for oneself, for the military member, or for the biological, adopted, or foster child, a stepchild, or a legal ward of the military member, or a child for whom the military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, provided that the need for counseling arises from the covered active duty or call to covered active duty status of the military member;

(6) *Rest and Recuperation.*

(i) To spend time with the military member who is on short-term, temporary Rest and Recuperation leave during the period of deployment;

(ii) Eligible employees may take leave for the duration of the Rest and Recuperation leave provided to the military member, up to a maximum of 15 days for each instance of Rest and Recuperation leave;

(7) *Post-deployment activities.*

(i) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the military member's covered active duty status; and

(ii) To address issues that arise from the death of the military member while on covered active duty status, such as

meeting and recovering the body of the military member, making funeral arrangements, and attending funeral services;

(8) *Additional activities.* To address other events which arise out of the military member's covered active duty or call to covered active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

9. Amend § 825.127 by:

a. revising the section heading;

b. re-designating current paragraphs (b) through (d) as (d) through (f) respectively;

c. adding new paragraph (b)

d. adding new paragraph (c);

e. revising the last sentence of newly designated paragraph (d)(3);

f. removing ''weeks'' and adding in its place ''workweeks'' every time it appears in paragraph (e)(3);

g. revising newly designated paragraph (f)

h. removing the phrase ''paragraph (c)'' everywhere it appears in newly designated paragraph (e) and adding in its place ''paragraph (e)'' to read as follows:

§ 825.127 Leave to care for a covered servicemember with a serious injury or illness (''military caregiver leave'').

* * * * *

(a) Eligible employees are entitled to FMLA leave to care for a covered servicemember with a serious illness or injury.

(b) ''Covered servicemember'' means:

(1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness. ''Outpatient status'' means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

(2) A covered veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness. ''Covered veteran'' means an individual who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. An eligible employee must commence leave to care for a covered veteran within five years of the veteran's active duty service but the ''single 12-month period'' described in paragraph (e)(1) of this section may extend beyond the five-year period.

(c) A ''serious injury or illness'':

(1) In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating; and,

(2) In the case of a covered veteran, an injury or illness will be a qualifying serious injury or illness if it was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:

(i) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

(ii) A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service Related Disability Rating (VASRD) of 50% or higher, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(iii) A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a service-connected disability or disabilities, or would do so absent treatment.

(d) * * *

(3) * * * An employer is permitted to require an employee to provide confirmation of covered family relationship to the covered servicemember pursuant to § 825.122(k).

* * *

(f) A husband and wife who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 26 workweeks of leave during the ''single 12-month period'' described in paragraph (e) of this section if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement, to care for the employee's parent with a serious health condition, or to care for a covered servicemember with a serious injury or illness.

Subpart B—Employee Leave Entitlements Under the Family and Medical Leave Act

10. Amend § 825.200 as follows:

a. revising paragraph (a)(5);

b. revising the citation following the last sentence in paragraph (f); and

c. revising the citation following the last sentence in paragraph (g), to read as follows:

§ 825.200 Amount of leave.

(a) * * *

(5) Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

* * * * *

(f) * * * *See* § 825.127(e)(1).

(g) * * * *See* § 825.127(e)(2).

* * * * *

11. Amend § 825.202 by revising the second sentence in paragraph (b) and revising the first sentence in paragraph (b)(1), to read as follows:

§ 825.202 Intermittent leave or reduced leave schedule.

* * * * *

(b) * * * For intermittent leave or leave on a reduced leave schedule taken because of one's own serious health condition, to care for a spouse, parent, son, or daughter with a serious health condition, or to care for a covered servicemember with a serious injury or illness, there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. * * *

(1) Intermittent leave may be taken for a serious health condition of a spouse, parent, son, or daughter, for the employee's own serious health condition, or a serious injury or illness of a covered servicemember which requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. * * *

* * * * *

12. Amend § 825.205 by:

a. revising paragraph (a);

b. revising paragraph (b)(1);

c. revising paragraph (c), and

d. adding paragraph (d), to read as follows:

§ 825.205 Increments of FMLA leave for intermittent or reduced schedule leave.

(a) *Minimum increment.* (1) When an employee takes FMLA leave on an intermittent or reduced leave schedule basis, the employer must account for the leave using an increment no greater than the shortest period of time that the employer uses to account for use of other forms of leave provided that it is not greater than one hour and provided further that an employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken. An employer may not require an employee to take more leave than is necessary to address the circumstances that precipitated the need for the leave, provided that the leave is counted using the shortest increment of leave used to account for any other type of leave. (*See also* § 825.205(a)(2) for the physical impossibility exception and §§ 825.600 and 825.601 for special rules applicable to employees of schools.) If an employer uses different increments to account for different types of leave, the employer must account for FMLA leave in the smallest increment used to account for any other type of leave. For example, if an employer accounts for the use of annual leave in increments of one hour and the use of sick leave in increments of one-half hour, then FMLA leave use must be accounted for using increments no larger than one-half hour. If an employer accounts for other forms of leave use only in increments greater than one hour, the employer must account for FMLA leave use in increments no greater than one hour. An employer may account for FMLA leave in shorter increments than used for other forms of leave. For example, an employer that accounts for other forms of leave in one hour increments may account for FMLA leave in a shorter increment when the employee arrives at work several minutes late, and the employer wants the employee to begin work immediately. Such accounting for FMLA leave will not alter the increment considered to be the shortest period used to account for other forms of leave or the use of FMLA leave in other circumstances. In all cases, employees may not be charged FMLA leave for periods during which they are working.

(2) Where it is physically impossible for an employee using intermittent leave or working a reduced leave schedule to commence or end work mid-way through a shift, such as where a flight attendant or a railroad conductor is scheduled to work aboard an airplane or train, or a laboratory employee is unable to enter or leave a sealed ''clean room'' during a certain period of time and no equivalent position is available, the entire period that the employee is forced to be absent is designated as FMLA leave and counts against the employee's FMLA entitlement. The period of the physical impossibility is limited to the period during which the employer is unable to permit the employee to work at the same or an equivalent position prior to a period of FMLA leave or return the employee to the same or equivalent position due to the physical impossibility after a period of FMLA leave. *See* § 825.214.

(b) *Calculation of leave.* (1) When an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the employee's leave entitlement. The actual workweek is the basis of leave entitlement. Therefore, if an employee who would otherwise work 40 hours a week takes off 8 hours, the employee would use one-fifth (⅕) of a week of FMLA leave. Similarly, if a full-time employee who would otherwise work 8-hour days works 4-hour days under a reduced leave schedule, the employee would use one-half (½) week of FMLA leave. When an employee works a part-time schedule or variable hours, the amount of FMLA leave that an employee uses is determined on a pro rata or proportional basis If an employee who would otherwise work 30 hours per week works only 20 hours a week under a reduced leave schedule, the employee's ten hours of leave would constitute one-third (⅓) of a week of FMLA leave for each week the employee works the reduced leave schedule. An employer may convert these fractions to their hourly equivalent so long as the conversion equitably reflects the employee's total normally scheduled hours. An employee does not accrue FMLA-protected leave at any particular hourly rate. An eligible employee is entitled to up to a total of 12 workweeks of leave, or 26 workweeks in the case of military caregiver leave, and the total number of hours contained in those workweeks is necessarily dependent on the specific hours the employee would have worked but for the FMLA leave.

* * * * *

(c) *Overtime.* If an employee would normally be required to work overtime, but is unable to do so because of an FMLA-qualifying reason that limits the employee's ability to work overtime, the hours which the employee would have been required to work may be counted against the employee's FMLA entitlement. In such a case, the employee is using intermittent or reduced schedule leave. For example, if an employee would normally be required to work for 48 hours in a particular week, but due to a serious health condition the employee is unable to work more than 40 hours that week, the employee would utilize eight hours of FMLA-protected leave out of the 48-hour workweek, or one-sixth (⅙) of a week of FMLA leave. Voluntary overtime hours that an employee does not work due to an FMLA-qualifying reason may not be counted against the employee's FMLA leave entitlement.

(d) *Calculation of leave for airline flight crew employees.* (1) For flight crew employees who are ''line holders,'' the employee's scheduled workweek, which is the total scheduled duty hours for that workweek, is the basis for calculating the employee's FMLA leave. The amount of FMLA leave is determined on a pro rata or proportional basis according to principles established in paragraph (b) of this section. For example, if a line holder needed to take four hours of leave during a workweek in which the employee was scheduled to work 20 hours, the FMLA leave used would be one-fifth (⅕) of a workweek.

(2) For an airline flight crew employee on reserve status, an average of the greater of the applicable monthly guarantee or actual duty hours worked in each of the prior 12 months would be used for calculating the employee's average workweek. The workweek determination must be completed at the employee's first instance of leave and is valid for the remainder of the FMLA leave year. The amount of FMLA leave is determined on a pro rata or proportional basis according to principles established in paragraph (b) of this section. For example, if it was determined that a reserve status employee had a workweek of 20 hours after averaging the greater of the employee's monthly guarantee or actual duty hours over the past 12 months, the employee would be entitled to 12 20-hour workweeks for FMLA leave. If the employee needed four hours of FMLA leave in one workweek, the employee would have used one-fifth (⅕) of a workweek.

13. Amend § 825.213(a) by revising the fifth sentence in paragraph (a)(3) to read as follows:

§ 825.213 Employer recovery of benefit costs.

(a) * * *

(3) * * * For purposes of medical certification, the employee may use the optional DOL forms developed for these

purposes (*see* §§ 825.306(b), 825.310(c)–(d)). * * *

* * * * *

Subpart C—Employee and Employer Rights and Obligations Under the Act

14. Amend § 825.300 by:

a. Removing ''*www.wagehour.dol.gov*'' and adding in its place ''*www.dol.gov/whd*'' whenever it appears in this section.

b. revising the first sentence of paragraph (a)(4);

c. revising paragraph (b)(2);

d. revising paragraph (c)(1)(ii);

e. revising the first sentence of paragraph (c)(6); and

f. revising the second sentence of paragraph (d)(4) to read as follows:

§ 825.300 Employer notice requirements.

(a) * * *

(4) To meet the requirements of paragraph (a)(3) of this section, employers may duplicate the text of the Department's prototype notice (WHD Publication 1420) or may use another format so long as the information provided includes, at a minimum, all of the information contained in that notice.

* * *

(b) * * *

(2) The eligibility notice must state whether the employee is eligible for FMLA leave as defined in § 825.110. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible, including as applicable the number of months the employee has been employed by the employer, the number of hours of service with the employer during the 12-month period, and whether the employee is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite. Notification of eligibility may be oral or in writing; employers may use optional Form WH–381 (Notice of Eligibility and Rights and Responsibility) to provide such notification to employees. Prototypes are available from the nearest office of the Wage and Hour Division or on the Internet at *www.dol.gov/whd.* The employer is obligated to translate this notice in any situation in which it is obligated to do so in § 825.300(a)(4).

* * * * *

(c) * * *

(1) * * *

(ii) Any requirements for the employee to furnish certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of covered active duty or call to covered active duty status, and the consequences of failing to do so (*see* §§ 825.305, 825.309, 825.310, 825.313);

* * *

(6) A prototype notice of rights and responsibilities may be obtained from local offices of the Wage and Hour Division or from the Internet at *www.dol.gov/whd.* * * *

* * * * *

(d) * * *

(4) * * * A prototype designation notice may be obtained from local offices of the Wage and Hour Division or from the Internet at *www.dol.gov/whd.* * * *

* * * * *

15. Amend § 825.302 by:

a. removing ''active duty'' and adding in its place ''covered active duty'' whenever it appears in paragraph (c); and

b. revising the citation in the second sentence of paragraph (c), to read as follows:

§ 825.302 Employee notice requirements for foreseeable FMLA leave.

(a) * * *

(c) * * * Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee is pregnant or has been hospitalized overnight; whether the employee or the employee's family member is under the continuing care of a health care provider; if the leave is due to a qualifying exigency, that a military member is on covered active duty or call to covered active duty status, and that the requested leave is for one of the reasons listed in § 825.126(b); if the leave is for a family member, that the condition renders the family member unable to perform daily activities, or that the family member is a covered servicemember with a serious injury or illness; and the anticipated duration of the absence, if known.

* * *

* * * * *

16. Amend § 825.303 by:

a. removing ''active duty'' and adding in its place ''covered active duty'' every time it appears in paragraph (b);

b. revising the citation in the second sentence from 825.126(a) to 825.126(b) in paragraph (b) to read as follows:

§ 825.303 Employee notice requirements for unforeseeable FMLA leave.

* * * * *

(b) * * * Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee is pregnant or has been hospitalized overnight; whether the employee or the employee's family member is under the continuing care of a health care provider; if the leave is due to a qualifying exigency, that a military member is on covered active duty or call to covered active duty status, that the requested leave is for one of the reasons listed in § 825.126(b), and the anticipated duration of the absence; or if the leave is for a family member that the condition renders the family member unable to perform daily activities or that the family member is a covered servicemember with a serious injury or illness; and the anticipated duration of the absence, if known.

* * *

* * * * *

17. Amend § 825.306 by revising paragraph (b) to read as follows:

§ 825.306 Content of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member.

* * * * *

(b) DOL has developed two optional forms (Form WH–380E and Form WH–380F, as revised) for use in obtaining medical certification, including second and third opinions, from health care providers that meets FMLA's certification requirements. Optional form WH–380E is for use when the employee's need for leave is due to the employee's own serious health condition. Optional form WH–380F is for use when the employee needs leave to care for a family member with a serious health condition. These optional forms reflect certification requirements so as to permit the health care provider to furnish appropriate medical information. Form WH–380E and WH–380F, as revised, or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in §§ 825.306, 825.307, and 825.308. In all instances the information on the form must relate only to the serious health condition for which the current need for leave exists. Prototype forms WH–380E and WH–380F may be obtained from local offices of the Wage and Hour Division or from the Internet at *www.dol.gov/whd.*

* * * * *

18. Amend § 825.309 by:

a. removing ''active duty'' and adding in its place ''covered active duty'' every time it appears in this section;

b. revising paragraph (a);

c. revising paragraphs (b)(4) and (b)(5);

d. adding paragraph (b)(6);

e. removing the parenthetical at the end of the first sentence in paragraph (c); and

f. revising the first and second sentences in paragraph (c).

The additions and revisions read as follows:

§ 825.309 Certification for leave taken because of a qualifying exigency.

(a) *Active Duty Orders.* The first time an employee requests leave because of a qualifying exigency arising out of the covered active duty or call to covered active duty status of a military member (as defined in § 825.126(a)(1)–(2)), an employer may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the military member's covered active duty service. This information need only be provided to the employer once. A copy of new active duty orders or other documentation issued by the military may be required by the employer if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status of the same or a different military member.

(b) * * *

(4) If an employee requests leave because of a qualifying exigency on an intermittent or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency;

(5) If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and email address) and a brief description of the purpose of the meeting; and

(6) If the qualifying exigency involves Rest and Recuperation leave, a copy of the military member's Rest and Recuperation orders, or other documentation issued by the military which indicates that the military member has been granted Rest and Recuperation leave, and the dates of the military member's Rest and Recuperation leave.

(c) DOL has developed an optional form (Form WH–384) for employees' use in obtaining a certification that meets FMLA's certification requirements. Form WH–384 may be obtained from local offices of the Wage and Hour Division or from the Internet at *www.dol.gov/whd.* * * *

* * * * *

19. Amend § 825.310 by:

a. adding paragraph (a)(5);

b. revising the first sentence of paragraph (b);

c. adding paragraph (b)(1)(v);

d. revising paragraph (b)(2);

e revising paragraph (b)(4);

f. re-designating current paragraph (c)(6) as (c)(7);

g. adding new paragraph (c)(6);

h. revising paragraph (d);

i. revising the citation in paragraph (e)(3) from § 825.122(j) to § 825.122(k);

j. revising paragraph (f) to read as follows:

§ 825.310 Certification for leave taken to care for a covered servicemember (military caregiver leave).

(a) * * *

(5) Any health care provider as defined in § 825.125.

(b) If the authorized health care provider is unable to make certain military-related determinations outlined below, the authorized health care provider may rely on determinations from an authorized DOD representative (such as a DOD recovery care coordinator) or an authorized VA representative. * * *

(1) * * *

(v) A health care provider as defined in § 825.125.

(2) Whether the covered servicemember's injury or illness was incurred in the line of duty on active duty or, if not, whether the covered servicemember's injury or illness existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty on active duty;

* * * * *

(4) A statement or description of appropriate medical facts regarding the covered servicemember's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave.

(i) In the case of a current member of the Armed Forces, such medical facts must include information on whether the injury or illness may render the covered servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating and whether the member is receiving medical treatment, recuperation, or therapy;

(ii) In the case of a covered veteran, such medical facts must include information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is:

(A) The continuation of an injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating; or

(B) A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service Related Disability Rating (VASRD) of 50% or higher, and that such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave;

(C) A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a service-connected disability or disabilities, or would do so absent treatment.

* * * * *

(c) * * *

(6) Whether the covered servicemember is a veteran, the date of separation from military service, and whether the separation was other than dishonorable. The employer may require the employee to provide documentation issued by the military which indicates that the covered servicemember is a veteran, the date of separation, and that the separation is other than dishonorable. Where an employer requires such documentation, an employee may provide a copy of the veteran's Certificate of Release or Discharge from Active Duty issued by the U.S. Department of Defense (DD Form 214) or other proof of veteran status.

* * * * *

(d) DOL has developed an optional form (WH–385) for employees' use in obtaining certification that meets FMLA's certification requirements, which may be obtained from local offices of the Wage and Hour Division or on the Internet at *www.dol.gov/whd.* This optional form reflects certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave to care for a covered servicemember with a serious injury or illness. WH–385, or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in this section. In all instances the information on the certification must relate only to the serious injury or illness for which the current need for leave exists. An employer may seek authentication and/or clarification of the certification under § 825.307. Second and third opinions under § 825.307 are not permitted for leave to care for a covered servicemember when the certification has been completed by one of the types of health care providers identified in § 825.310(a)(1)–(4). However, second and third opinions under § 825.307 are permitted when the certification has been completed by a health care

provider as defined in § 825.125 that is not one of the types identified in § 825.310(a)(1)–(4). Additionally, recertifications under § 825.308 are not permitted for leave to care for a covered servicemember. An employer may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to § 825.122(k) of the FMLA.

(e) * * *

(3) An employer may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to § 825.122(k) when an employee supports his or her request for FMLA leave with a copy of an ITO or ITA.

(f) Where medical certification is requested by an employer, an employee may not be held liable for administrative delays in the issuance of military documents, despite the employee's diligent, good-faith efforts to obtain such documents. *See* § 825.305(b). In all instances in which certification is requested, it is the employee's responsibility to provide the employer with complete and sufficient certification and failure to do so may result in the denial of FMLA leave. *See* § 825.305(d).

Subpart E—Record-keeping Requirements

20. Amend § 825.500 by:

a. revising paragraph (g) introductory text; and

b. adding new paragraph (h), to read as follows:

§ 825.500 Record-keeping requirements.

* * * * *

(g) Records and documents relating to certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files. If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing ''family medical history'' or ''genetic information'' as defined in GINA shall be maintained in accordance with the confidentiality requirements of Title II of GINA (*see* 29 CFR 1635.9), which permit such information to be disclosed consistent with the requirements of FMLA. If the ADA, as amended, is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements (*see* 29 CFR 1630.14(c)(1)), except that:

* * * * *

(h) Covered employers who employ eligible airline flight crew employees are required to maintain certain records ''on file with the Secretary.'' To comply with this requirement, such employers shall make, keep, and preserve records in accordance with the requirements of this section, and additional records as follows:

(1) Records and documents containing information specifying the applicable monthly guarantee with respect to each category of employee to whom such guarantee applies, including copies of any relevant collective bargaining agreements or employer policy documents; and

(2) A record of hours scheduled for airline flight crew employees on non-reserve status.

21. Redesignate § 825.800 as § 825.102, and revise newly designated § 825.102 to read as follows:

§ 825.102 Definitions.

For purposes of this part:

Act or *FMLA* means the Family and Medical Leave Act of 1993, Public Law 103–3 (February 5, 1993), 107 Stat. 6 (29 U.S.C. 2601 *et seq., as amended*).

ADA means the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.,* as amended).

Administrator means the Administrator of the Wage and Hour Division, U.S. Department of Labor, and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.

Airline flight crew employee means an airline flight crewmember or flight attendant as those terms are defined in regulations of the Federal Aviation Administration. *See also* § 825.110(c)(2).

Applicable monthly guarantee, means:

(1) For the individual airline flight crew employee who is not on reserve status (line holder), the minimum number of hours for which an employer has agreed to *schedule* such employee for any given month; and

(2) For an airline flight crew employee who is on reserve status, the number of hours for which an employer has agreed to *pay the employee for any given month. See also § 825.110(c)(2).*

COBRA means the continuation coverage requirements of Title X of the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended (Public Law 99–272, title X, section 10002; 100 Stat 227; 29 U.S.C. 1161–1168).

Commerce and *industry or activity affecting commerce* mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include ''commerce'' and any ''industry affecting commerce'' as defined in sections 501(1) and 501(3) of the Labor Management Relations Act of 1947, 29 U.S.C. 142(1) and (3).

Contingency operation means a military operation that:

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress. *See also* § 825.126(a)(2).

Continuing treatment by a health care provider means any one of the following:

(1) *Incapacity and treatment.* A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(i) Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (*e.g.,* physical therapist) under orders of, or on referral by, a health care provider; or

(ii) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

(iii) The requirement in paragraphs (1)(i) and (ii) of this definition for treatment by a health care provider means an in-person visit to a health care provider. The first in-person treatment visit must take place within seven days of the first day of incapacity.

(iv) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.

(v) The term ''extenuating circumstances'' in paragraph (1)(i) means circumstances beyond the

employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. *See also* § 825.115(a)(5).

(2) *Pregnancy or prenatal care.* Any period of incapacity due to pregnancy, or for prenatal care. *See also* § 825.120.

(3) *Chronic conditions.* Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(i) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

(ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(iii) May cause episodic rather than a continuing period of incapacity (*e.g.,* asthma, diabetes, epilepsy, *etc.*).

(4) *Permanent or long-term conditions.* A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(5) *Conditions requiring multiple treatments.* Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

(i) Restorative surgery after an accident or other injury; or

(ii) A condition that would likely result in a period of incapacity of more than three consecutive full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

(6) Absences attributable to incapacity under paragraphs (2) or (3) of this definition qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

Covered active duty or call to covered active duty status means:

(1) In the case of a member of the Regular Armed Forces, *duty under a call or order to active duty (or notification of an impending call or order to covered active duty)* during the deployment of the member with the Armed Forces to a foreign country; and,

(2) In the case of a member of the reserve components of the Armed Forces, duty under a call or order to active duty (or notification of an impending call or order to active duty) during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of Title 10, United States Code. *See also* § 825.126(a).

Covered servicemember means:

(1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, or

(2) A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

Covered veteran means an individual who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

Eligible employee means:

(1) An employee who has been employed for a total of at least 12 months by the employer on the date on which any FMLA leave is to commence, except that an employer need not consider any period of previous employment that occurred more than seven years before the date of the most recent hiring of the employee, *unless:*

(i) The break in service is occasioned by the fulfillment of the employee's National Guard or Reserve military service obligation (the time served performing the military service must be also counted in determining whether the employee has been employed for at least 12 months by the employer, but this section does not provide any greater entitlement to the employee than would be available under the Uniformed Services Employment and Reemployment Rights Act (USERRA)); or

(ii) A written agreement, including a collective bargaining agreement, exists concerning the employer's intention to rehire the employee after the break in service (*e.g.,* for purposes of the employee furthering his or her education or for childrearing purposes); and

(2) Who, on the date on which any FMLA leave is to commence, has been employed for at least 1,250 hours of service with such employer during the previous 12-month period, *except that:*

(i) An employee returning from fulfilling his or her National Guard or Reserve military obligation shall be credited with the hours-of-service that would have been performed *but for* the period of military service in determining whether the employee worked the 1,250 hours of service (accordingly, a person reemployed following military service has the hours that would have been worked for the employer added to any hours actually worked during the previous 12-month period to meet the 1,250 hour requirement);

(ii) To determine the hours that would have been worked during the period of military service, the employee's pre-service work schedule can generally be used for calculations;

(iii) An airline flight crew employee will be considered to meet the hours of service requirement if in the previous 12 months the employee has worked or been paid for not less than 60 percent of the applicable total monthly guarantee and has worked or been paid for not less than 504 hours (not counting personal commute time, or vacation, medical or sick leave). *See* 825.110(c)(2)–(3).

(3) Who is employed in any State of the United States, the District of Columbia or any Territories or possession of the United States.

(4) Excludes any Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code.

(5) Excludes any employee of the United States House of Representatives or the United States Senate covered by the Congressional Accountability Act of 1995, 2 U.S.C. 1301.

(6) Excludes any employee who is employed at a worksite at which the employer employs fewer than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is also fewer than 50.

(7) Excludes any employee employed in any country other than the United States or any Territory or possession of the United States.

Employ means to suffer or permit to work.

Employee has the meaning given the same term as defined in section 3(e) of the Fair Labor Standards Act, 29 U.S.C. 203(e), as follows:

(1) The term ''employee'' means any individual employed by an employer;

(2) In the case of an individual employed by a public agency, ''employee'' means—

(i) Any individual employed by the Government of the United States—

(A) As a civilian in the military departments (as defined in section 102 of Title 5, United States Code),

(B) In any executive agency (as defined in section 105 of Title 5, United States Code), excluding any Federal officer or employee covered under subchapter V of chapter 63 of Title 5, United States Code,

(C) In any unit of the legislative or judicial branch of the Government which has positions in the competitive service, excluding any employee of the United States House of Representatives or the United States Senate who is covered by the Congressional Accountability Act of 1995,

(D) In a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or

(ii) Any individual employed by the United States Postal Service or the Postal Regulatory Commission; and

(iii) Any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

(A) Who is not subject to the civil service laws of the State, political subdivision, or agency which employs the employee; and

(B) Who—

(*1*) Holds a public elective office of that State, political subdivision, or agency,

(*2*) Is selected by the holder of such an office to be a member of his personal staff,

(*3*) Is appointed by such an officeholder to serve on a policymaking level,

(*4*) Is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of the office of such officeholder, or

(*5*) Is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

Employee employed in an instructional capacity. See the definition of *Teacher* in this section.

Employer means any person engaged in commerce or in an industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year, and includes—

(1) Any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer;

(2) Any successor in interest of an employer; and

(3) Any public agency.

Employment benefits means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an ''employee benefit plan'' as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3). The term does not include non-employment related obligations paid by employees through voluntary deductions such as supplemental insurance coverage. (*See* § 825.209(a).)

FLSA means the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*).

Group health plan means any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employer's employees, former employees, or the families of such employees or former employees. For purposes of FMLA the term ''group health plan'' shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

(1) No contributions are made by the employer;

(2) Participation in the program is completely voluntary for employees;

(3) The sole functions of the employer with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) The employer receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and

(5) The premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

Health care provider means:

(1) The Act defines ''health care provider'' as:

(i) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(ii) Any other person determined by the Secretary to be capable of providing health care services.

(2) Others ''capable of providing health care services'' include only:

(i) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

(ii) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

(iii) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement.

(iv) Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(v) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

(3) The phrase ''authorized to practice in the State'' as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in several of the ''activities of daily living'' (ADLs) or ''instrumental activities of daily living'' (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of

daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

Instructional employee: See the definition of *Teacher* in this section.

Intermittent leave means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

ITO or *ITA,* invitational travel order (ITO) or invitational travel authorization (ITA), are orders issued by the Armed Forces to a family member to join an injured or ill servicemember at his or her bedside. *See also* § 825.310(e).

Key employee means a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee's worksite. *See also* § 825.217.

Mental disability: See the definition of *Physical or mental disability* in this section.

Military caregiver leave means leave taken to care for a covered servicemember with a serious injury or illness under the Family and Medical Leave Act of 1993. (See § 825.127.)

Next of kin of a covered servicemember means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. *See also* § 825.127(g)(3).

Outpatient status means, with respect to a covered servicemember who is a current member of the Armed Forces, the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. *See also* § 825.127(e).

Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined below. This term does not include parents ''in law.''

Parent of a covered servicemember means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents ''in law.'' *See also* § 825.127(g)(2).

Person means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons, and includes a public agency for purposes of this part.

Physical or mental disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR part 1630, issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.,* as amended, define these terms.

Public agency means the government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Regulatory Commission), a State, or a political subdivision of a State, or any interstate governmental agency. Under section 101(5)(B) of the Act, a public agency is considered to be a ''person'' engaged in commerce or in an industry or activity affecting commerce within the meaning of the Act.

Reserve components of the Armed Forces, for purposes of qualifying exigency leave, include the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation. *See also* § 825.126(a)(2)(ii).

Reduced leave schedule means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

Secretary means the Secretary of Labor or authorized representative.

Serious health condition means an illness, injury, impairment or physical or mental condition that involves inpatient care as defined in § 825.114 or continuing treatment by a health care provider as defined in § 825.115. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not ''serious health conditions'' unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of § 825.113 are met.

Serious injury or illness means:

(1) In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating; and

(2) In the case of a covered veteran,

(i) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

(ii) A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service Related Disability Rating (VASRD) of 50% or higher, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(iii) A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a service-connected disability or disabilities, or would do so absent treatment. *See also* § 825.127(c).

Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and ''incapable of self-care because of a

mental or physical disability'' at the time that FMLA leave is to commence.

Son or daughter of a covered servicemember means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age. *See also* § 825.127(g)(1).

Son or daughter on covered active duty or an impending call or order to covered active duty means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on or has received notice of a call or order to covered active duty, and who is of any age. *See also* § 825.126(b)(1).

Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

State means any State of the United States or the District of Columbia or any Territory or possession of the United States.

Teacher (or employee employed in an instructional capacity, or instructional employee) means an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

TRICARE is the health care program serving active duty servicemembers, National Guard and Reserve members, retirees, their families, survivors, and certain former spouses worldwide.

22. Remove and Reserve Appendices B through E, and G and H to part 825.

[FR Doc. 2012–2311 Filed 2–14–12; 8:45 am]

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 301
Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–121647–10]

RIN 1545–BK68

Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under chapter 4 of Subtitle A (sections 1471 through 1474) of the Internal Revenue Code of 1986 (Code) regarding information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities. These regulations affect persons making certain U.S.-related payments to FFIs and other foreign entities and payments by FFIs to other persons. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by April 30, 2012. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for May 15, 2012, at 10 a.m. must be received by May 1, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–121647–10), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–121647–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–121647–10). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John Sweeney, (202) 622–3840; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo Taylor, *Oluwafunmilayo.P.Taylor@irscounsel.treas.gov,* (202) 622–7180 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

I. In General

This document contains proposed amendments to 26 CFR part 1 under sections 1471 through 1474 of the Code. On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Public Law 111–147 (the HIRE Act), added chapter 4 of Subtitle A (chapter 4), comprised of sections 1471 through 1474, to the Code. These provisions were originally introduced as part of the Foreign Account Tax Compliance Act of 2009 (H.R. 3933), commonly referred to as FATCA.

Chapter 4 generally requires foreign financial institutions (FFIs) to provide information to the Internal Revenue Service (IRS) regarding their United States accounts (U.S. accounts). Chapter 4 also requires certain non-financial foreign entities (NFFEs) to provide information on their substantial United States owners (substantial U.S. owners) to withholding agents. Chapter 4 imposes a withholding tax on certain payments to FFIs and NFFEs that fail to comply with their obligations.

Since the enactment of chapter 4, the Department of the Treasury (Treasury Department) and the IRS have issued preliminary guidance on the implementation of chapter 4. See Notice 2010–60, 2010–37 I.R.B. 329, Notice 2011–34, 2011–19 I.R.B. 765, and Notice 2011–53, 2011–32 I.R.B. 124 (collectively, the FATCA Notices). See § 601.601(d)(2)(ii)(b). The Treasury Department and the IRS received numerous comments in response to the FATCA Notices, as well as on chapter 4 more generally. These comments were carefully considered in developing these proposed regulations.

II. Chapter 4 in the Context of the U.S. Federal Income Tax Laws

Like the tax systems in many countries, the U.S. Federal income tax system relies on voluntary compliance. That is, taxpayers are expected to compute, report, and remit their Federal income tax liability each year. Also, as is the case in many countries, third-party payors of certain items are required to report these amounts to the IRS. Such reporting serves as an important and long-standing check on voluntary compliance.

The reporting and diligence rules applicable to third-party payors are comprehensive. In particular, chapter 61 of subtitle A of the Code (chapter 61), comprised in relevant part of sections 6041 through 6049, requires certain payors to document their third-party payees and report certain types of payments (for example interest, dividends, and gross proceeds from broker transactions) made to those payees. These rules are subject to exceptions for certain non-U.S. payors (including many FFIs), certain payments of foreign source income, and certain payments to foreign persons. In addition, chapter 3 of subtitle A of the Code (chapter 3), comprised of sections 1441 through 1464, generally requires withholding agents to document their payees and to withhold and report with respect to certain U.S. source payments made to foreign persons. This third-party information reporting assists taxpayers in correctly computing and reporting their tax liabilities, increases compliance with tax obligations, reduces the incidence of and opportunities for tax evasion, and thus helps to maintain the fairness of the U.S. Federal income tax system.

As a result of recent improvements in international communications and the associated globalization of the world economy, U.S. taxpayers' investments have become increasingly global in scope. FFIs now provide a significant proportion of the investment opportunities for, and act as intermediaries with respect to the investments of, U.S. taxpayers. Like U.S. financial institutions, FFIs are generally in the best position to identify and report with respect to their U.S. customers. Absent such reporting by FFIs, some U.S. taxpayers may attempt to evade U.S. tax by hiding money in offshore accounts. To prevent this abuse of the voluntary compliance system and address the use of offshore accounts to facilitate tax evasion, it is essential in today's global investment climate that reporting be available with respect to both the onshore and offshore accounts of U.S. taxpayers. This information reporting strengthens the integrity of the voluntary compliance system by placing U.S. taxpayers that have access to international investment opportunities on an equal footing with U.S. taxpayers that do not have such access or otherwise choose to invest within the United States.

To this end, chapter 4 extends the scope of the U.S. information reporting regime to include FFIs that maintain U.S. accounts. Chapter 4 also imposes increased disclosure obligations on certain NFFEs that present a high risk of U.S. tax avoidance. In addition, chapter 4 provides for withholding on FFIs and NFFEs that do not comply with the reporting and other requirements of chapter 4. This withholding generally may be credited against the U.S. income tax liability of the beneficial owner of the payment to which the withholding is attributable, and generally may be

refunded to the extent the withholding exceeds such liability. An FFI that does not comply with the requirements of section 1471(b), however, and that beneficially owns the payment from which tax is withheld under chapter 4, may not receive a credit or refund of such tax except to the extent required by a treaty obligation of the United States.

Recognizing that there are costs associated with the implementation of any new reporting regime, the Treasury Department and the IRS have considered carefully all comments received and have met extensively with stakeholders to develop an implementation approach that achieves an appropriate balance between fulfilling the important policy objectives of chapter 4 and minimizing the burdens imposed on stakeholders. Further to this end, the Treasury Department and the IRS will continue to engage with interested stakeholders, including foreign governments, in connection with finalizing these proposed regulations regarding the efficient and effective implementation of chapter 4. In particular, to minimize burden, facilitate coordination with local law restrictions, and improve collaboration in the battle against offshore tax evasion, the Treasury Department and the IRS are considering, in consultation with foreign governments, an alternative approach to implementation whereby an FFI could satisfy the reporting requirements of chapter 4 if: (1) the FFI collects the information required under chapter 4 and reports this information to its residence country government; and (2) the residence country government enters into an agreement to report this information annually to the IRS, as required by chapter 4, pursuant to an income tax treaty, tax information exchange agreement, or other agreement with the United States. Moreover, consistent with the policies underlying chapter 4, the Treasury Department and the IRS remain committed to working cooperatively with foreign jurisdictions on multilateral efforts to improve transparency and information exchange on a global basis.

III. Statutory Provisions and FATCA Notices

A. Statutory Provisions

Section 1471(a) requires any withholding agent to withhold 30 percent of any withholdable payment to an FFI that does not meet the requirements of section 1471(b). A withholdable payment is defined in section 1473(1) to mean, subject to certain exceptions: (i) any payment of interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income (FDAP income), if such payment is from sources within the United States; and (ii) any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the United States.

An FFI meets the requirements of section 1471(b) if it either enters into an agreement (an FFI agreement) with the IRS under section 1471(b)(1) to perform certain obligations or meets requirements prescribed by the Treasury Department and the IRS to be deemed to comply with the requirements of section 1471(b). An FFI is defined as any financial institution that is a foreign entity, other than a financial institution organized under the laws of a possession of the United States (generally referred to as a U.S. territory in this preamble). For this purpose, section 1471(d)(5) defines a financial institution as, except to the extent provided by the Secretary, any entity that: (i) Accepts deposits in the ordinary course of a banking or similar business; (ii) as a substantial portion of its business, holds financial assets for the account of others; or (iii) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or any interest in such securities, partnership interests, or commodities.

Section 1471(b)(1)(A) and (B) requires an FFI that enters into an FFI agreement (a participating FFI) to identify its U.S. accounts and comply with verification and due diligence procedures prescribed by the Secretary. A U.S. account is defined under section 1471(d)(1) as any financial account held by one or more specified United States persons, as defined in section 1473(3), (specified U.S. persons) or United States owned foreign entities (U.S. owned foreign entities), subject to certain exceptions. Section 1471(d)(2) defines a financial account to mean, except as otherwise provided by the Secretary, any depository account, any custodial account, and any equity or debt interest in an FFI, other than interests that are regularly traded on an established securities market. A U.S. owned foreign entity is defined in section 1471(d)(3) as any foreign entity that has one or more substantial U.S. owners (as defined in section 1473(2)).

A participating FFI is required under section 1471(b)(1)(C) and (E) to report certain information on an annual basis to the IRS with respect to each U.S. account and to comply with requests for additional information by the Secretary with respect to any U.S. account. The information that must be reported with respect to each U.S. account includes: (i) The name, address, and taxpayer identifying number (TIN) of each account holder who is a specified U.S. person (or, in the case of an account holder that is a U.S. owned foreign entity, the name, address, and TIN of each specified U.S. person that is a substantial U.S. owner of such entity); (ii) the account number; (iii) the account balance or value; and (iv) except to the extent provided by the Secretary, the gross receipts and gross withdrawals or payments from the account (determined for such period and in such manner as the Secretary may provide). In lieu of reporting account balance or value and reporting gross receipts and gross withdrawals or payments, a participating FFI may, subject to conditions provided by the Secretary, elect under section 1471(c)(2) to report the information required under sections 6041, 6042, 6045, and 6049 as if such institution were a U.S. person and each holder of such U.S. account that is a specified U.S. person or U.S. owned foreign entity were a natural person and citizen of the United States. If foreign law would prevent the FFI from reporting the required information absent a waiver from the account holder, and the account holder fails to provide a waiver within a reasonable period of time, the FFI is required under section 1471(b)(1)(F) to close the account.

Section 1471(b)(1)(D)(i) requires a participating FFI to withhold 30 percent of any passthru payment to a recalcitrant account holder or to an FFI that does not meet the requirements of section 1471(b) (nonparticipating FFI). A passthru payment is defined in section 1471(d)(7) as any withholdable payment or other payment to the extent attributable to a withholdable payment. Section 1471(d)(6) defines a recalcitrant account holder as any account holder that fails to provide the information required to determine whether the account is a U.S. account, or the information required to be reported by the FFI, or that fails to provide a waiver of a foreign law that would prevent reporting. A participating FFI may, subject to such requirements as the Secretary may provide, elect under section 1471(b)(3) not to withhold on passthru payments, and instead be subject to withholding on payments it receives, to the extent those payments are allocable to recalcitrant account

holders or nonparticipating FFIs. Section 1471(b)(1)(D)(ii) requires a participating FFI that does not make such an election to withhold on passthru payments it makes to any participating FFI that makes such an election.

Section 1471(e) provides that the requirements of the FFI agreement shall apply to the U.S. accounts of the participating FFI and, except as otherwise provided by the Secretary, to the U.S. accounts of each other FFI that is a member of the same expanded affiliated group, as defined in section 1471(e)(2).

Section 1471(f) exempts from withholding under section 1471(a) certain payments beneficially owned by certain persons, including any foreign government, international organization, foreign central bank of issue, or any other class of persons identified by the Secretary as posing a low risk of tax evasion.

Section 1472(a) requires a withholding agent to withhold 30 percent of any withholdable payment to an NFFE if the payment is beneficially owned by the NFFE or another NFFE, unless the requirements of section 1472(b) are met with respect to the beneficial owner of the payment. Section 1472(d) defines an NFFE as any foreign entity that is not a financial institution as defined in section 1471(d)(5).

The requirements of section 1472(b) are met with respect to the beneficial owner of a payment if: (i) The beneficial owner or payee provides the withholding agent with either a certification that such beneficial owner does not have any substantial U.S. owners, or the name, address, and TIN of each substantial U.S. owner; (ii) the withholding agent does not know or have reason to know that any information provided by the beneficial owner or payee is incorrect; and (iii) the withholding agent reports the information provided to the Secretary.

Section 1472(c)(1) provides that withholding under section 1472(a) does not apply to payments beneficially owned by certain classes of persons, including any class of persons identified by the Secretary. In addition, section 1472(c)(2) provides that withholding under section 1472(a) does not apply to any class of payment identified by the Secretary for purposes of section 1472(c) as posing a low risk of tax evasion.

Section 1474(a) provides that every person required to withhold and deduct any tax under chapter 4 is made liable for such tax and is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of chapter 4. In general, the beneficial owner of a payment is entitled to a refund for any overpayment of tax actually due under other provisions of the Code. However, with respect to any tax properly deducted and withheld under section 1471 from a payment beneficially owned by an FFI, section 1474(b)(2) provides that the FFI is not entitled to a credit or refund, except to the extent required by a treaty obligation of the United States (and, if a credit or refund is required by a treaty obligation of the United States, no interest shall be allowed or paid with respect to such credit or refund). In addition, section 1474(b)(3) provides that no credit or refund shall be allowed or paid with respect to any tax properly deducted and withheld under chapter 4 unless the beneficial owner of the payment provides the Secretary with such information as the Secretary may require to determine whether such beneficial owner is a U.S. owned foreign entity and the identity of any substantial U.S. owners of such entity.

Section 1474(c) provides that information provided under chapter 4 is confidential under rules similar to section 3406(f), except that the identity of an FFI that meets the requirements of section 1471(b) is not treated as return information for purposes of section 6103.

Section 1474(d) provides that the Secretary shall provide for the coordination of chapter 4 with other withholding provisions under the Code, including providing for the proper crediting of amounts deducted and withheld under chapter 4 against amounts required to be deducted and withheld under other provisions.

Section 1474(f) provides that the Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of, and prevent the avoidance of, chapter 4.

B. FATCA Notices

On August 29, 2010, the Treasury Department and the IRS released Notice 2010–60, which provided preliminary guidance regarding the implementation of chapter 4. In particular, Notice 2010–60: (i) Defined the scope of certain grandfathered obligations; (ii) provided initial guidance on what entities would be considered FFIs and NFFEs; (iii) set forth the account due diligence procedures for FFIs and U.S. financial institutions with respect to new and preexisting accounts held by individuals and entities; (iv) provided initial guidance on the information required to be reported by FFIs with respect to their U.S. accounts and recalcitrant account holders; and (v) requested further comments on a number of issues.

On April 8, 2011, the Treasury Department and the IRS released Notice 2011–34, which modified and supplemented the guidance in Notice 2010–60. Specifically, Notice 2011–34: (i) Modified the account due diligence procedures for preexisting accounts held by individuals; (ii) provided initial guidance regarding the definition and identification of passthru payments; (iii) provided guidance on initial categories of FFIs that would be deemed compliant with the requirements of section 1471(b); (iv) modified and supplemented the guidance in Notice 2010–60 regarding the reporting required of FFIs with respect to their U.S. accounts; (v) provided initial guidance regarding the interaction of the qualified intermediary (QI) regime and chapter 4; and (vi) provided initial guidance regarding the application of section 1471(b) to expanded affiliated groups.

On July 14, 2011, the Treasury Department and the IRS released Notice 2011–53, which provides for phased implementation of certain requirements under chapter 4, and discusses certain substantive and procedural matters.

Explanation of Provisions

I. Executive Summary

These proposed regulations seek to implement the chapter 4 reporting and withholding regime efficiently and effectively by establishing adequate lead times to allow system development and by minimizing the overall compliance burdens in a manner that is consistent with chapter 4's enforcement goals. To accomplish this goal, the proposed regulations incorporate the guidance described in the FATCA Notices and, in response to comments and further consideration, revise and refine the rules discussed therein. The proposed regulations also provide guidance on topics that were not addressed in the FATCA Notices.

The proposed regulations take into account the numerous helpful comments received, provide extensive guidance on all major aspects of the implementation of chapter 4, and, in response to requests received by the Treasury Department and the IRS, provide detail and certainty on the scope of obligations required under chapter 4. To facilitate review of this detailed operational guidance, the following section provides a summary of the most significant modifications and additions the proposed regulations

make to the guidance provided in the FATCA Notices, an overview of the obligations of FFIs, and the timeline for phased implementation as currently proposed.

A. Modifications and Additions to FATCA Notices

Significant modifications and additions to the guidance in the FATCA Notices include the following:

1. *Expanded Scope of ''Grandfathered Obligations.''* Section 501(d)(2) of the HIRE Act provides that no amount shall be required to be deducted or withheld from any payment under any obligation outstanding on March 18, 2012, or from the gross proceeds from any disposition of such an obligation. To facilitate implementation of chapter 4 by withholding agents and FFIs, the proposed regulations exclude from the definition of withholdable payment and passthru payment any payment made under an obligation outstanding on January 1, 2013, and any gross proceeds from the disposition of such an obligation.

2. *Transitional Rules for Affiliates with Legal Prohibitions on Compliance.* Section 1471(e) provides that the requirements of the FFI agreement shall apply to the U.S. accounts of the participating FFI and, except as otherwise provided by the Secretary, to the U.S. accounts of each other FFI that is a member of the same expanded affiliated group. Notice 2011–34 states that the Treasury Department and the IRS intend to require that each FFI that is a member of an expanded affiliated group must be a participating FFI or deemed-compliant FFI in order for any FFI in the expanded affiliated group to become a participating FFI. Recognizing that some jurisdictions have in place laws that prohibit an FFI's compliance with certain of chapter 4's requirements, the proposed regulations, pursuant to the authority granted in section 1471(e), provide a two-year transition, until January 1, 2016, for the full implementation of this requirement. During this transitional period, an FFI affiliate in a jurisdiction that prohibits the reporting or withholding required by chapter 4 will not prevent the other FFIs within the same expanded affiliated group from entering into an FFI agreement, provided that the FFI in the restrictive jurisdiction agrees to perform due diligence to identify its U.S. accounts, maintain certain records, and meet certain other requirements. Similar rules apply to branches of FFIs that are subject to comparable legal prohibitions on compliance.

3. *Additional Categories of Deemed-Compliant FFIs.* Section 1471(b)(2) provides that an FFI may be deemed to comply with the requirements of section 1471(b) if it meets certain requirements. Notice 2011–34 provides initial guidance regarding certain categories of FFIs that will be deemed to comply with the requirements of section 1471(b). The proposed regulations expand the guidance in Notice 2011–34 and provide additional categories of deemed-compliant institutions. The expansion of categories of deemed-compliant institutions is intended to focus the application of chapter 4's obligations on financial institutions that provide services to the global investment community and reduce or eliminate burdens on truly local entities and other entities for which entering into an FFI agreement is not necessary to carry out the purposes of chapter 4.

4. *Modification of Due Diligence Procedures for the Identification of Accounts.* Section 1471(b) requires participating FFIs to identify their U.S. accounts. Notices 2010–60 and 2011–34 provide guidance regarding the due diligence procedures that participating FFIs will be required to undertake to identify their U.S. accounts. A number of comments suggested modifications to that guidance, in particular with respect to preexisting accounts, to reduce the administrative burden on FFIs. To address these concerns in a manner that is consistent with the policy objectives of chapter 4, the proposed regulations rely primarily on electronic reviews of preexisting accounts. For preexisting individual accounts that are offshore obligations, manual review of paper records is limited to accounts with a balance or value that exceeds $1,000,000 (unless the electronic searches meet certain requirements, in which case manual review is not required). In addition, the proposed regulations provide detailed guidance on the precise scope of paper records required to be searched. Additionally, with respect to preexisting accounts, individual accounts with a balance or value of $50,000 or less, and certain cash value insurance contracts with a value of $250,000 or less, are excluded from the due diligence procedure. With respect to preexisting entity accounts, a number of burden-reducing measures are proposed, including exclusions of accounts of $250,000 or less and extended reliance on information gathered in the context of the due diligence required to comply with anti-money laundering/''know your customer'' (AML/KYC) rules, and simplified procedures to identify the chapter 4 status of preexisting entity accounts. With respect to new accounts, the proposed due diligence rules rely extensively on an FFI's existing customer intake procedures. Accordingly, the proposed regulations generally do not require an FFI to make significant modifications to the information collected on customer intake, other than with respect to account holders identified as FFIs, as passive investment entities, or as having U.S. indicia.

5. *Guidance on Procedures Required to Verify Compliance.* Section 1471(b)(1)(B) requires a participating FFI to comply with such verification procedures as the Secretary may require with respect to the identification of U.S. accounts. Notice 2010–60 states that the Treasury Department and the IRS were exploring the possibility of relying on written certifications by high-level management employees regarding the steps taken to comply with chapter 4, and Notice 2011–34 provides further guidance on the certifications to be provided by officers of a participating FFI. The proposed regulations modify and supplement the guidance in Notices 2010–60 and 2011–34 by providing that responsible FFI officers will be expected to certify that the FFI has complied with the terms of the FFI agreement. Verification of such compliance through third-party audits is not mandated. If an FFI complies with the obligations set forth in an FFI agreement, it will not be held strictly liable for failure to identify a U.S. account.

6. *Refinement of the Definition of Financial Account.* Section 1471(d)(2) defines a financial account to mean, except as otherwise provided by the Secretary, any depository account, any custodial account, and any equity or debt interest in an FFI, other than interests that are regularly traded on an established securities market. The proposed regulations refine the definition of financial accounts to focus on traditional bank, brokerage, money market accounts, and interests in investment vehicles, and to exclude most debt and equity securities issued by banks and brokerage firms, subject to an anti-abuse rule.

7. *Extension of the Transition Period for the Scope of Information Reporting.* Notice 2011–53 provides for phased implementation of the reporting required under chapter 4 with respect to U.S. accounts. Pursuant to Notice 2011–53, only identifying information (name, address, TIN, and account number) and account balance or value of U.S. accounts would be required to be reported in 2014 (with respect to 2013). Numerous commentators indicated that they would need additional time to make the systems adjustments necessary

to be able to report income and gross proceeds. To facilitate the implementation of chapter 4 by FFIs, the proposed regulations provide that reporting on income will be phased in beginning in 2016 (with respect to the 2015 calendar year), and reporting on gross proceeds will begin in 2017 (with respect to the 2016 calendar year). In addition, the proposed regulations provide that FFIs may elect to report information either in the currency in which the account is maintained or in U.S. dollars.

8. *Passthru Payments.* Section 1471(b)(1)(D) requires participating FFIs to withhold on passthru payments made to nonparticipating FFIs and recalcitrant account holders. Notice 2011–53 states that participating FFIs will not be obligated to withhold on passthru payments that are not withholdable payments (foreign passthru payments) made before January 1, 2015. The Treasury Department and the IRS have received numerous comments expressing concern about the costs, administrative complexity, and legal impediments associated with identifying and withholding on passthru payments. The comments indicated that, without additional time to work through these issues, it would be impossible for many FFIs to commit to fulfill their obligations under chapter 4. In recognition of these concerns, and to facilitate implementation of the chapter 4 rules by FFIs, the proposed regulations provide that withholding will not be required with respect to foreign passthru payments before January 1, 2017. Instead, until withholding applies, to reduce incentives for nonparticipating FFIs to use participating FFIs to block the application of the chapter 4 rules, the proposed regulations require participating FFIs to report annually to the IRS the aggregate amount of certain payments made to each nonparticipating FFI. With respect to the scope and ultimate implementation of withholding on foreign passthru payments, the Treasury Department and the IRS request comments on approaches to reduce burden, for example, by providing a *de minimis* exception from foreign passthru payment withholding and a simplified computational approach or safe harbor rules to determine an FFI's passthru payment percentage. In the case of jurisdictions that enter into agreements to facilitate FATCA implementation, the Treasury Department and the IRS will work with the governments of such jurisdictions to develop practical alternative approaches to achieving the policy objectives of passthru payment withholding. In addition, where such an agreement provides for the foreign government to report to the IRS information regarding U.S. accounts and recalcitrant account holders, FFIs in such jurisdictions may not be required to withhold on any foreign passthru payments to recalcitrant account holders.

B. Summary of Obligations of FFIs

The proposed regulations provide a detailed explanation of how an FFI can satisfy the obligations imposed by the statutory provisions of chapter 4 and thus avoid withholding. A summary of the proposed rules follows.

1. Due Diligence Required To Identify U.S. Accounts

Chapter 4 requires FFIs to identify U.S. accounts, which include both accounts held by U.S. individuals and certain U.S. entities, and accounts held by foreign entities with substantial U.S. owners (generally, owners with a greater than ten percent interest). To provide certainty, and minimize costs and burdens in a manner that is consistent with policy objectives, the proposed regulations outline the due diligence required to be undertaken by FFIs to identify U.S. accounts. For this purpose, the proposed regulations distinguish between the diligence expected with respect to individual accounts and entity accounts and between preexisting accounts and new accounts. It is intended that FFIs that adhere to the diligence guidelines outlined in the proposed regulations will be treated as compliant with the requirement to identify U.S. accounts and will not be held to a strict liability standard.

a. Preexisting Individual Accounts

- Accounts with a balance or value that does not exceed $50,000 are exempt from review, unless the FFI elects otherwise.
- Certain cash value insurance and annuity contracts held by individual account holders that are preexisting accounts with a value or balance of $250,000 or less are exempt from review, unless the FFI elects otherwise.
- Accounts that are offshore obligations with a balance or value that exceeds $50,000 ($250,000 for a cash value insurance or annuity contract) but does not exceed $1,000,000 are subject only to review of electronically searchable data for indicia of U.S. status. For this purpose, U.S. indicia include: (1) Identification of an account holder as a U.S. person; (2) a U.S. place of birth; (3) a U.S. address; (4) a U.S. telephone number; (5) standing instructions to transfer funds to an account maintained in the United States; (6) a power of attorney or signatory authority granted to a person with a U.S. address; or (7) a U.S. ''in-care-of'' or ''hold mail'' address that is the sole address the FFI has identified for the account holder. No further search of records or contact with the account holder is required unless U.S. indicia are found through the electronic search. The $1,000,000 threshold replaces the $500,000 threshold and the private banking test proposed in the FATCA Notices. Accordingly, FFIs will not be required to distinguish between private banking accounts and other accounts.
- Accounts with a balance that exceeds $1,000,000 are subject to review of electronic and non-electronic files for U.S. indicia, including an inquiry of the actual knowledge of any relationship manager associated with the account. To minimize burden, review of non-electronic files is limited to the current customer files and certain other documents, and is required only to the extent that the electronically searchable files do not contain sufficient information about the account holder.

b. New Individual Accounts

For individual accounts opened after the effective date of an FFI's agreement, the FFI will be required to review the information provided at the opening of the account, including identification and any documentation collected under AML/KYC rules. If U.S. indicia are identified as part of that review, the FFI must obtain additional documentation or treat the account as held by a recalcitrant account holder. Accordingly, FFIs will generally not need to make significant changes to the information collected during the account opening process in order to identify U.S, accounts, except to the extent that U.S. indicia are identified.

c. Preexisting Entity Accounts

- Preexisting entity accounts with account balances of $250,000 or less are exempt from review until the account balance exceeds $1,000,000.
- For remaining preexisting entity accounts, FFIs can generally rely on AML/KYC records and other existing account information to determine whether the entity is an FFI, is a U.S. person, is excepted from the requirement to document its substantial U.S. owners (for example, because it is engaged in a nonfinancial trade or business), or is a passive investment entity (referred to in the regulations as a ''passive NFFE'').

○ In the case of preexisting accounts of passive investment entities with account balances that do not exceed $1,000,000, FFIs may generally rely on information collected for AML/KYC due diligence purposes to identify substantial U.S. owners.

○ In the case of preexisting entity accounts of passive investment entities with account balances that exceed $1,000,000, FFIs must obtain information regarding all substantial U.S. owners or a certification that the entity does not have substantial U.S. owners.

d. New Entity Accounts

• The following new entity accounts are exempt from documentation of substantial U.S. owners:

○ Accounts of another FFI (other than an owner-documented FFI for which the participating FFI has agreed to perform reporting); and

○ Accounts of an entity engaged in an active nonfinancial trade or business or otherwise excepted from documentation requirements.

• With respect to the remaining entities (essentially, passive investment entities), FFIs will be required to determine whether the entity has any substantial U.S. owners upon opening a new account, generally by obtaining a certification from the account holder.

2. Deemed-Compliant FFIs

The statute grants the Treasury Department and the IRS regulatory authority to identify certain FFIs as ''deemed-compliant'' FFIs that may avoid withholding under chapter 4 without entering into an FFI agreement. The FATCA Notices identified certain types of FFIs that would be deemed to be compliant with chapter 4. The proposed regulations implement the exclusions provided in the FATCA Notices, and expand the categories of deemed-compliant FFIs to include certain banks and investment funds conducting business only with local clients, low-risk entities, or participating FFIs, subject to restrictions designed to prevent the FFIs from being used for U.S. tax evasion. In addition, the proposed regulations expand the category of retirement plans that are treated as posing a low risk of tax evasion and thus are excepted from the chapter 4 requirements.

3. Transitional Rule for Affiliated Groups

The proposed regulations provide that, until January 1, 2016, a nonparticipating FFI or branch that is subject to foreign laws that prohibit that FFI or branch from complying with the requirements of section 1471(b) will not disqualify an otherwise participating FFI group with which it is affiliated, as long as the FFI or branch complies with the due diligence procedures required of participating FFIs for identifying U.S. accounts and maintains records of the account holder documentation it collects. These ''limited FFI affiliates'' and ''limited branches'' will be subject to withholding upon receipt of withholdable payments.

4. Phase-In of Reporting Obligations

The proposed regulations phase in the reporting obligations of FFIs as follows:

• For reporting in 2014 and 2015 (with respect to calendar years 2013 and 2014), participating FFIs are required to report only name, address, TIN, account number, and account balance with respect to U.S. accounts.

• Beginning with reporting in 2016 (with respect to calendar year 2015), in addition to the aforementioned information, income associated with U.S. accounts must be reported.

• Beginning with reporting in 2017 (with respect to calendar year 2016), full reporting, including information on the gross proceeds from broker transactions, will be required.

5. Phase-In of Scope of Passthru Payments

The proposed regulations phase in the passthru payment regime in two steps.

• Beginning on January 1, 2014, FFIs, like U.S. withholding agents, will be required to withhold on passthru payments that are withholdable payments. FFIs will also be required to report annually on the aggregate amount of certain payments to each nonparticipating FFI for the 2015 and 2016 calendar years.

• Beginning no earlier than January 1, 2017, the scope of passthru payments will be expanded beyond withholdable payments and FFIs will be required to withhold on such payments pursuant to and in accordance with future guidance. In the case of jurisdictions that enter into agreements to facilitate FATCA implementation, Treasury and IRS will work with the governments of such jurisdictions to develop practical alternative approaches to achieving the policy objectives of passthru payment withholding.

6. Refunds

The statute provides that, to the extent withholding on a payment under chapter 4 exceeds the beneficial owner's underlying U.S. tax liability, the beneficial owner may claim a refund for the overwithheld amount. No refund is available, however, for payments beneficially owned by nonparticipating FFIs, except to the extent required under an income tax treaty. In addition, the proposed regulations provide that an NFFE claiming a refund (other than a refund attributable to a reduced rate of tax under a tax treaty obligation of the United States) must provide information regarding the NFFE's substantial U.S. owners, or certification that the NFFE does not have substantial U.S. owners. The Treasury Department and the IRS intend to issue future guidance regarding the substantiation requirements necessary for claiming a refund.

II. Detailed Description of the Provisions of the Proposed Regulations

A. Section 1.1471–1—Scope of Chapter 4 Provisions and Definitions

Proposed § 1.1471–1(a) describes the purpose and scope of the proposed regulations under sections 1471 through 1474. Paragraph (b) provides definitions of terms relevant to the provisions of chapter 4 and the regulations thereunder. In order to maintain consistency with the structure of the statutory provisions of chapter 4, certain terms are defined in other sections of the regulations. For example, § 1.1471–5 contains certain definitions that apply only for purposes of section 1471 and the regulations thereunder, and § 1.1473–1 contains definitions of certain terms contained in section 1473. In order to facilitate review of the regulations, § 1.1471–1(b) contains specific cross-references to the sections in which each such term is defined. Many of the relevant terms are also used in chapters 3 and 61, and the proposed regulations in most cases adopt the terms and definitions provided in the regulations under those chapters. In the instances in which a different definition is used for purposes of the proposed regulations, the Treasury Department and the IRS generally intend to revise the definitions provided in the regulations under chapter 3 or 61 to conform to the chapter 4 definitions. It is expected that these conforming changes, and the other changes to chapter 3 or 61 guidance needed to conform to chapter 4, as noted in this preamble, will become effective on January 1, 2014, when the withholding and reporting obligations under chapter 4 begin to be phased in.

B. Rules Applicable to Withholding Agents

1. Overview

Under the proposed regulations, the rules relating to the requirement to withhold U.S. tax on certain payments

apply principally to U.S. financial institutions or withholding agents. FFIs, other than FFIs serving as intermediaries with respect to withholdable payments, will generally not be required to withhold tax on payments made to account holders or nonparticipating FFIs before January 1, 2017. In the case of jurisdictions that enter into agreements to facilitate FATCA implementation, Treasury and IRS will work with the governments of such jurisdictions to develop practical alternative approaches to achieving the policy objectives of passthru payment withholding. In addition, where such an agreement provides for the foreign government to report to the IRS information regarding U.S. accounts and recalcitrant account holders, FFIs in such jurisdictions may not be required to withhold on any foreign passthru payments to recalcitrant account holders. The proposed regulations generally coordinate withholding under chapters 3 and 4 by requiring a withholding agent to withhold on payments of U.S. source FDAP income under chapter 4 when the withholding agent would be responsible for withholding under chapter 3.

2. Section 1.1471–2—Requirement To Deduct and Withhold Tax on Withholdable Payments to Certain FFIs

Paragraph (a)(1) of § 1.1471–2 provides the general rule that, absent an exception, a withholding agent must withhold under section 1471(a) on a withholdable payment made after December 31, 2013, to an FFI regardless of whether the FFI receives the withholdable payment as a beneficial owner or intermediary. Paragraph (a)(2) provides special withholding rules, including a requirement for withholding agents to withhold with respect to payments of U.S. source FDAP to a participating FFI that is not a QI and is acting as an intermediary or that is a nonwithholding flow-through entity for chapter 3 purposes, unless the participating FFI provides the documentation necessary to determine the portion of the payment for which no withholding is required under chapter 4. A participating FFI that acts as an intermediary or that is a nonwithholding flow-through entity and that provides a valid withholding certificate and all required documentation is not required to withhold or report such payment under chapter 4 unless it knows or has reason to know that the withholding agent failed to withhold the correct amount or failed to report the payment correctly. These rules are intended to reduce instances in which overwithholding occurs because a withholding agent applies withholding under chapter 3 to a withholdable payment that is also subject to withholding by the participating FFI with respect to its own account holders under chapter 4.

Paragraph (a)(2)(iii) describes the circumstance in which a participating FFI will be permitted to make an election under section 1471(b)(3) to be withheld upon rather than to withhold on a passthru payment. Generally, a participating FFI that is a QI may make an election under section 1471(b)(3) to be withheld upon rather than to withhold only with respect to a payment that is U.S. source FDAP income and only if the participating FFI has not assumed primary withholding responsibility under chapter 3. A participating FFI that is a QI and that does not make the election under section 1473(b)(3) with respect to U.S. source FDAP income must assume primary withholding responsibility under chapter 3. The election under section 1471(b)(3) is not extended to withholding foreign partnerships (WPs) or withholding foreign trusts (WTs) because these entities are generally required to assume chapter 3 withholding responsibilities under their respective agreements with respect to their partners, beneficiaries, or owners, and the Treasury Department and the IRS intend to expand their responsibilities to assume chapter 4 withholding to coordinate their withholding requirements. Similarly, a foreign branch of a U.S. financial institution that is a QI not assuming primary withholding responsibility under chapter 3 must provide a withholding agent with the documentation necessary to perform withholding under chapter 4 with respect to payments of U.S. source FDAP income.

Paragraph (a)(2)(iv) describes the obligation of a financial institution organized under the laws of one of the U.S. territories (territory financial institution) to withhold on withholdable payments. Similar to the rules provided in chapter 3, a territory financial institution that acts as an intermediary with respect to a withholdable payment may agree to be treated similarly to a U.S. financial institution with respect to withholding and reporting under chapter 4. If a territory financial institution is a flow-through entity or acts as an intermediary with respect to a withholdable payment, the territory financial institution does not have an obligation to withhold under chapter 4, if it has provided its withholding agent with certain information to allow the withholding agent to withhold.

Paragraph (a)(2)(v) provides that when multiple withholding agents that are brokers are involved in effecting a sale, each broker must determine whether it is required to withhold on its payment of gross proceeds by reference to the status of its payee for chapter 4 purposes.

This paragraph also provides that for a ''delivery versus payment'' transaction, ''cash on delivery'' transaction, or other similar account or transaction, each broker that pays the gross proceeds is a withholding agent with respect to the payment.

Paragraph (a)(3) coordinates the withholding requirements of sections 1471(a) and 1471(b) with respect to participating FFIs that make withholdable payments to account holders, and generally provides that a participating FFI that complies with the withholding requirements of section 1471(b), as described in § 1.1471–4(b) and its FFI agreement, will be deemed to satisfy its withholding obligations with respect to withholdable payments under section 1471(a).

Paragraph (a)(4) describes payments for which no withholding is required, including payments for which the withholding agent lacks control, custody, or knowledge, and certain payments to participating FFIs and territory financial institutions. Paragraph (a)(4) also sets forth a transitional rule that exempts from withholding under section 1471(a) certain payments made prior to January 1, 2015, with respect to a preexisting account for which the withholding agent does not have documentation indicating the payee's status as a nonparticipating FFI, unless the payee is a prima facie FFI. The rules for determining if a payee is a prima facie FFI require the withholding agent to search its electronic data for certain indications that the payee is an FFI. In addition, paragraph (a)(4) provides for certain exceptions to withholding for payments made to certain classes of payees.

Paragraph (b) of § 1.1471–2 describes certain obligations the payments on which will be exempt from withholding under chapter 4. Section 501(d)(2) of the HIRE Act provides that no amount shall be deducted or withheld from any payment under any obligation outstanding on March 18, 2012, (two years after the date of enactment of the HIRE Act) or from the gross proceeds from any disposition of such an obligation. Paragraph (b)(1) provides that withholding is not required with respect to any payment under a grandfathered obligation or from the gross proceeds from any disposition of

such an obligation. Paragraph (b)(2)(ii) defines the term *grandfathered obligation* as any obligation outstanding on January 1, 2013, and the term *obligation* as a legal agreement that produces or could produce a withholdable payment or passthru payment, other than an instrument that is treated as equity for U.S. tax purposes or that lacks a stated expiration or term.

Paragraphs (b)(2)(iii) and (iv) provide that the determination of whether an obligation is outstanding on January 1, 2013, depends upon the type of obligation. A debt instrument is outstanding on January 1, 2013, if it has an issue date, as determined under U.S. tax law, before January 1, 2013. A significant modification under § 1.1001–3 will result in the obligation being treated as newly issued as of the date of the significant modification. An obligation that is not a debt instrument is outstanding on January 1, 2013, if a legally binding agreement establishing the obligation was executed before January 1, 2013. A material modification of the obligation will result in the obligation being treated as newly issued or executed as of the effective date of such modification, and whether (and when) a material modification has occurred will be determined based upon all relevant facts and circumstances. Paragraph (b)(3) describes special rules to determine when a payment is made under a grandfathered obligation in the case of a flow-through entity with respect to a partner, beneficiary, or owner in such entity. See section XIX.G of this preamble for a request for comments regarding a potential grandfather status for certain investment vehicles.

IV. Section 1.1471–3—Establishing a Payee's Chapter 4 Status

Paragraph (a) of § 1.1471–3 sets forth the rules for determining the payee for chapter 4 purposes and the documentation requirements to establish a payee's chapter 4 status. These rules generally follow the rules under § 1.1441–1(b)(2) for determining the payee of a payment subject to withholding or reporting for chapter 3 purposes, but are modified in several ways, including to account for the requirement of withholding agents to determine an FFI's status for chapter 4 purposes and to determine whether an NFFE that is a flow-through entity is an active NFFE under § 1.1472–1(c)(1)(v). The Treasury Department and the IRS intend to revise Forms W–8 and W–9 as necessary to permit a payee to establish its status for both chapters 3 and 4 on one form.

Paragraph (c) of § 1.1471–3 provides rules for when a withholding agent may reliably associate a withholdable payment with valid documentation. Paragraph (c)(2) sets forth the documentation requirements for payments made through an intermediary or flow-through entity that is not the payee. Paragraph (c)(3) provides the standards for withholding certificates, written statements (in lieu of withholding certificates), withholding statements, and documentary evidence; describes a withholding agent's responsibilities with respect to changes in circumstances and documenting payees after payments are made; allows for the electronic transmission of withholding certificates (including by facsimile); and allows a withholding agent to continue to accept a prior version of the withholding certificate for six months after an IRS revision of the withholding certificate (based on the revision date shown on the updated withholding certificate).

Paragraph (d) of § 1.1471–3 provides the general documentation requirements to establish a payee's chapter 4 status for determining whether withholding applies under section 1471 or 1472. Paragraph (d) also sets forth the specific documentation requirements that must be met in order to treat a payee as having a particular chapter 4 status, and provides certain exceptions and special rules for payees that hold offshore and preexisting accounts. Consistent with the rules for documentation of offshore accounts contained in § 1.6049–5(c)(4), paragraph (d) allows a withholding agent that makes a payment to an account that is an offshore obligation to rely on documentary evidence, in certain cases supplemented by a written statement, to establish the payee's chapter 4 status in lieu of obtaining a withholding certificate. To minimize the burden on withholding agents to collect new documentation for preexisting accounts, paragraph (d) provides that for withholdable payments made prior to January 1, 2017, with respect to a preexisting account, a withholding agent may treat a payee as a participating FFI or a registered deemed-compliant FFI if it has a valid withholding certificate establishing the payee's foreign status and the withholding agent has verified the payee's FFI–EIN (provided by the payee either orally or in writing) on the IRS's published FFI list. With respect to preexisting accounts held by passive NFFEs with a balance or value of $1,000,000 or less, paragraph (d)(11)(vi)(D)(*2*) permits a withholding agent to rely upon its review conducted for AML due diligence purposes to identify any substantial U.S. owners of the payee.

Paragraph (e) sets forth the standards of knowledge for when a withholding agent knows or has reason to know that a withholding certificate is unreliable or incorrect, and modifies the standards set forth in chapter 3 for a withholding agent to determine the foreign status of a payee by adding a telephone number in the United States and a U.S. place of birth as reasons to know that a withholding certificate establishing foreign status is unreliable or incorrect, unless additional documentation of foreign status is obtained. The Treasury Department and the IRS intend to modify the chapter 3 rules regarding standards of knowledge to conform to these requirements. Paragraph (e) also requires a withholding agent to review the IRS's published FFI list and to check annually to confirm a payee's claim to be a participating FFI or registered deemed-compliant FFI.

Paragraph (f) of § 1.1471–3 sets forth presumption rules for determining the payee's chapter 4 status in the absence of documentation or when documentation is unreliable or incorrect. The presumption rules set forth in paragraph (f) for purposes of chapter 4 differ from the presumption rules of chapters 3 and 61 because the rules in paragraph (f) require a withholding agent to presume that certain entities that are treated as exempt recipients under § 1.6049–4(c)(1)(ii) and for which reliable documentation is not obtained are foreign persons. The Treasury Department and the IRS intend to make a conforming change to the presumption rules set forth in chapters 3 and 61.

V. Section 1.1471–4—Foreign Financial Institution Agreement (FFI Agreement)

A. In General

The Treasury Department and the IRS intend to publish a draft model FFI agreement in early 2012, and intend to publish a final model FFI agreement, incorporating comments received, in the fall of 2012. Section 1.1471–4 sets forth the general requirements that will apply to an FFI under an FFI agreement. Paragraph (a) of § 1.1471–4 includes a general description of the withholding, due diligence, reporting, verification, and certain other requirements under the FFI agreement. Paragraphs (b), (c), and (d) set forth in more detail the withholding, due diligence, and account reporting requirements that will apply to an FFI under an FFI agreement.

The FFI agreement will also provide the IRS's verification process for

determining a participating FFI's compliance with its FFI agreement. As described in paragraph (a), this will require, among other things, that a participating FFI: (i) Adopt written policies and procedures governing the participating FFI's compliance with its responsibilities under the FFI agreement; (ii) conduct periodic internal reviews of its compliance (rather than periodic external audits, as is presently required for many QIs); and (iii) periodically provide the IRS with a certification and certain other information that will allow the IRS to determine whether the participating FFI has met its obligations under the FFI agreement. The Treasury Department and the IRS intend to include the requirements to conduct these periodic reviews and to provide their certifications in the FFI agreement or in other guidance. The Treasury Department and the IRS request comments regarding the scope and content of such reviews and the factual information and representations FFIs should be required to include as part of such certifications. The proposed FFI agreement also will provide that repetitive or systematic failures of the participating FFI's processes relating to its compliance with the FFI agreement may result in enhanced compliance verification requirements such as an external audit of one or more issues identified by the IRS. The proposed FFI agreement also will provide the egregious circumstances that will cause a participating FFI to be in default with respect to its FFI agreement.

B. Withholding Requirements Under the FFI Agreement

Paragraph (b) of § 1.1471–4 describes the withholding requirements of participating FFIs and provides that a participating FFI is required to withhold on any passthru payment that is a withholdable payment made to a recalcitrant account holder or a nonparticipating FFI (or a participating FFI that has made an election to be withheld upon under section 1471(b)(3)) after December 31, 2013. The requirements for withholding on foreign passthru payments are reserved.

Paragraph (b) of § 1.1471–4 also provides that a participating FFI is a withholding agent for purposes of chapter 4 and thus is subject to the requirements of sections 1471(a) and 1472(a) with respect to withholdable payments. Paragraph (b)(2) provides, however, that a participating FFI that complies with the withholding requirements of paragraph (b) and its FFI agreement will be deemed to satisfy its withholding obligations with respect to withholdable payments under sections 1471(a) and 1472(a).

Paragraph (b)(4) provides a special rule for dormant accounts, under which a participating FFI that withholds on passthru payments (including withholdable payments) made to a recalcitrant account holder of a dormant account may, in lieu of depositing the tax withheld, set aside the amount withheld in escrow until the date that the account ceases to be a dormant account. Paragraph (b)(4) provides that within 90 days of the account ceasing to be dormant, the participating FFI must obtain the appropriate documentation for the account holder, in which case the tax withheld is refunded to the account holder. If the participating FFI fails to obtain the required documentation within 90 days, the participating FFI must deposit the tax withheld.

Paragraph (b)(5) provides a special withholding rule for U.S. branches of participating FFIs, which treats a U.S. branch similar to a U.S. financial institution with respect to the withholding requirements under chapter 4. This paragraph provides that a U.S. branch that satisfies its backup withholding obligations under section 3406(a) with respect to accounts treated as held by U.S. non-exempt recipients will be treated as satisfying its withholding obligations under section 1471(b) with respect to such accounts. Paragraph (b)(5) thereby eliminates duplicate withholding that would otherwise occur with respect to account holders of a U.S. branch that are (or are presumed to be) U.S. non-exempt recipients to which backup withholding under section 3406 would apply. A U.S. branch of a participating FFI is also subject to special reporting requirements described in paragraph (d) of § 1.1471–4, which are coordinated with its withholding requirements under this paragraph.

C. Identification of Account Holders Under the FFI Agreement

Paragraph (c) of § 1.1471–4 describes the procedures for participating FFIs to identify and document U.S. accounts and accounts other than U.S. accounts. Paragraph (c)(2) describes the general requirements with respect to identification of account holders and incorporates the principles of § 1.1471–3 that determine the chapter 4 status of an account holder, associate an account with valid documentation (without regard to payments), and establish the standards of knowledge for reliance on documentation. Paragraph (c)(2) also requires a participating FFI to retain records of documentation collected, including electronic searches and responses to relationship manager inquiries with respect to certain high-value accounts, for a minimum of six years. The account identification and documentation for participating FFIs described in paragraph (c) generally follow the procedures described in Notice 2011–34 with some modifications made in response to comments.

For identification of entity accounts, paragraph (c)(3) incorporates the identification and documentation rules of § 1.1471–3 and provides an exception from these procedures for preexisting accounts held by entities that are offshore obligations with an account balance or value of $250,000 or less, subject to further diligence if the account balance or value subsequently exceeds $1,000,000. An account that meets this exception is not treated as a U.S. account, and the account holder is not treated as a nonparticipating FFI for withholding and reporting purposes with respect to the account.

For new accounts established for individual account holders, a participating FFI is required to review all information collected under its existing account opening procedures to determine whether the account holder has U.S. indicia (defined in paragraph (c)(4)(i)(A)). Where an account has U.S. indicia, paragraph (c)(4)(i)(B) describes the documentation a participating FFI is required to obtain in order to establish whether the account is a U.S. account. For accounts that are required to be treated as U.S. accounts, the participating FFI is generally required to collect a Form W–9 from each individual account holder. Except for such cases, these rules are intended to minimize the extent to which participating FFIs would need to modify their account opening and documentation collection procedures to comply with these requirements.

Paragraph (c)(4)(ii) of § 1.1471–4 incorporates the rule provided in § 1.1471–5(a)(4), which provides that a participating FFI may treat as other than a U.S. account a preexisting account with a balance or value of $50,000 or less that is held by one or more individuals. Paragraph (c)(4)(iii) provides a documentation exception for preexisting accounts of individual account holders that are offshore obligations, other than cash value insurance or annuity contracts, with an account balance or value of $50,000 or less. Paragraphs (c)(4)(iii)(A), (B), and (C) provide the requirements for accounts to meet this documentation exception, including aggregation rules. Paragraph (c)(4)(iv) provides a

documentation exception for preexisting cash value insurance or annuity contracts of individual account holders if such account has an account balance or value of $250,000 or less on the last day of the calendar year preceding the effective date of the FFI's FFI agreement. Accounts that meet these two exceptions will be subject to further due diligence procedures if the account balance or value subsequently exceeds $1,000,000. Further, an account that meets a documentation exception is not treated as a U.S. account and the account holder of such account is not treated as a recalcitrant account holder for withholding and reporting purposes.

Paragraph (c)(5) provides the currency translation rules for determining the account balance or value. Paragraph (c)(6) provides several examples illustrating the application of the aggregation rules described in paragraphs (c)(4)(iii) and (iv).

Paragraph (c)(7) provides an alternative to the general identification and documentation procedure of paragraph (c)(4)(i) for preexisting offshore accounts of individual account holders. Paragraph (c)(7)(ii) requires, as part of this alternative procedure, that the participating FFI conduct an electronic search for U.S. indicia and obtain the appropriate documentation to establish the account holder's status if U.S. indicia are found. A participating FFI that follows this alternative procedure with respect to an account will not be attributed knowledge with respect to information contained in any account files that the participating FFI did not review and that it was not required to review under this alternative procedure. Additionally, under this alternative procedure, a participating FFI will be treated as having obtained the required documentary evidence if the participating FFI's file contains a notation stating that documentary evidence has been examined and listing the type of document examined and the name of the employee that reviewed the document. The rule described in the preceding sentence is intended to limit those cases in which a participating FFI would need to contact its preexisting account holders to obtain additional documentation of their chapter 4 status.

In response to comments, the proposed regulations do not incorporate the requirement to identify and perform an enhanced review of private banking accounts, as described in Notice 2011–34. Instead, paragraph (c)(8) requires that a participating FFI perform an additional enhanced review of high-value accounts. A high-value account is any account with a balance or value that exceeds $1,000,000 at the end of the calendar year preceding the effective date of the participating FFI's FFI agreement, or at the end of any subsequent calendar year. As part of the enhanced review, the participating FFI must identify all high-value accounts for which a relationship manager has actual knowledge that the account holder is a U.S. person. For these accounts, the participating FFI is required to obtain from the account holder a Form W–9, and a valid and effective waiver, if necessary. For other high-value accounts, paragraph (c)(8)(iii) also requires an enhanced review of paper and electronic files. In response to comments, paragraph (c)(8)(iii)(B) provides that the paper review is limited to the current customer master file and certain documents, described in paragraphs (c)(8)(iii)(A)(*1*) through (*5*), obtained by the participating FFI in the five years prior to the effective date of its FFI agreement, and the review is required only to the extent sufficient information about the account holder is not available in the participating FFI's electronically searchable information. Paragraph (c)(8)(iv) provides an exception from the enhanced review requirement for any high-value account for which the participating FFI has obtained a Form W–8BEN and documentary evidence to establish the foreign status of the account holder, but the participating FFI is still required to perform the relationship manager inquiry. Paragraph (c)(9) provides an exception from the electronic search and, if the account is a high-value account, the enhanced review requirement (excluding the relationship manager inquiry) if the account was previously documented by the participating FFI to establish the account holder's status as a foreign individual in order to meet its obligations under a QI, WP, or WT agreement or to fulfill its reporting obligations as a U.S. payor under sections 6041, 6042, 6045, and 6049.

Paragraph (c)(10) requires a responsible officer of a participating FFI to make certain certifications. The first certification is required to confirm, with respect to its preexisting accounts that are high-value accounts, that within one year of the effective date of the FFI agreement the participating FFI has completed the required review and to the best of the responsible officer's knowledge, after conducting a reasonable inquiry, the participating FFI did not have any formal or informal practices or procedures in place at any time from August 6, 2011 (120 days from the release of Notice 2011–34 to the public) through the date of such certification to assist account holders in the avoidance of chapter 4. The Treasury Department and the IRS request comments regarding alternative due diligence or other procedures that should be required of FFIs that are unable to certify that no such practices or procedures were in place after such date in order to maintain participating FFI status.

The second certification by a responsible officer is required to confirm, with respect to all of its preexisting accounts, that within two years of the effective date of its FFI agreement the participating FFI has completed the account identification procedures and documentation requirements or, if it has not obtained the documentation required to be obtained with respect to an account, the participating FFI treats the account holder of such an account as a recalcitrant account holder or nonparticipating FFI.

D. Reporting Requirements of Participating FFIs

Paragraph (d) of § 1.1471–4 describes the reporting responsibilities of participating FFIs with respect to U.S. accounts and accounts held by recalcitrant account holders, and includes rules to phase in the reporting requirements. Paragraph (d)(2)(i) provides that a participating FFI is required to report any account that it is required to treat as a U.S. account or as held by a recalcitrant account holder that it maintained at any time during the preceding calendar year or as of the end of the year, respectively.

Paragraph (d)(2)(ii) provides that the participating FFI that maintains the account is responsible for reporting the account for each calendar year subject to an exception that requires a participating FFI to report with respect to account holders of a territory financial institution that acts as an intermediary with respect a withholdable payment and that does not agree to be treated as a U.S. person with respect to the payment. Paragraph (d)(2)(ii)(C) also provides an exception for a participating FFI that elects for one or more of its branches to separately report the accounts maintained by each such branch. This election is intended to address legal restrictions on sharing account holder information across branches located in different jurisdictions and the limitations of many FFIs' information technology systems.

Paragraph (d)(2)(iii)(A) provides a special reporting rule for participating FFIs (other than U.S. branches) that are U.S. payors to coordinate their chapter

61 reporting requirements with respect to U.S. non-exempt recipients with their chapter 4 reporting with respect to U.S. accounts. This rule provides that a participating FFI that is a U.S. payor may add the information required under paragraph (d)(5)(ii) to its reporting for chapter 61 purposes to satisfy the participating FFI's reporting requirements for U.S. accounts under chapter 4. Paragraph (d)(2)(iii)(B) describes a special reporting rule for a U.S. branch of a participating FFI to satisfy its reporting requirements under chapter 4 and to coordinate this reporting with its withholding requirements under § 1.1471–4(b). This reporting rule requires a U.S. branch to report for chapter 4 purposes in the same manner as a U.S. financial institution.

Paragraph (d)(2)(iv) requires a participating FFI that maintains an account held by a financial institution that it has identified as an owner-documented FFI to report information with respect to each owner of the owner-documented FFI that is a specified U.S. person.

Paragraph (d)(3) provides rules for reporting accounts held by specified U.S. persons and accounts held by U.S. owned foreign entities under section 1471(c)(1). These rules prescribe the information to be reported with respect to accounts required to be treated as U.S. accounts, the time and manner of filing the required form, and procedures for requesting an extension to file such forms. If a separate reporting election is not made with respect to a branch (as described in this preamble), a participating FFI is also required to report the jurisdiction of the branch that maintains the U.S. account being reported.

Paragraph (d)(4) provides guidance on the information required to be included on the U.S. account information reporting form, including the methods for determining the account balance or value and the currency to be used for reporting account balances and payments made with respect to the account. These rules generally follow the proposed guidance described in Notice 2011–34, but allow a participating FFI to report its U.S. accounts in the currency in which the account is maintained. Paragraph (d)(4)(vi) provides record retention requirements for account statements. The IRS is developing a form for U.S. account reporting and the procedures for processing the form.

Paragraph (d)(5) prescribes the reporting requirements for those participating FFIs that elect to report U.S. accounts under section 1471(c)(2). This paragraph provides that a participating FFI that makes such election must report under sections 6041, 6042, 6045, and 6049 with respect to reportable payments to the same extent as is required of a U.S. payor and requires that the participating FFI treat each holder of a U.S. account that is a specified U.S. person or U.S. owned foreign entity as a payee who is an individual and citizen of the United States. Paragraph (d)(5) also provides that the election under section 1471(c)(2) does not apply to cash value insurance or annuity contracts that are financial accounts and that would otherwise be subject to the reporting requirements of section 6047.

For accounts held by recalcitrant account holders, paragraph (d)(6) provides for aggregate reporting of recalcitrant account holders in separate categories. The separate categories of accounts held by recalcitrant account holders are accounts with U.S. indicia, accounts of other recalcitrant account holders, and dormant accounts. Paragraph (d)(6)(ii) defines dormant accounts and prescribes when an account ceases to be treated as a dormant account.

Paragraph (d)(7) sets forth special reporting rules for accounts maintained for the 2013 through 2015 calendar years. Paragraph (d)(7)(v)(B) provides that, with respect to the 2013 year, participating FFIs must report by September 30, 2014, those accounts identified as U.S. accounts or as held by recalcitrant account holders as of June 30, 2014. However, this paragraph further provides that a U.S. payor (including a U.S. branch) is not required to follow this special June 30, 2014, determination date and may instead report with respect to the 2013 calendar year in accordance with the reporting dates provided under chapter 61 with respect to all accounts identified as U.S. accounts or as held by recalcitrant account holders as of December 31, 2013. These rules also phase in the extent of information required to be reported by participating FFIs with respect to the 2013 through 2015 calendar years.

Paragraphs (d)(8) through (10) reserve on the reporting requirements for participating FFIs that are QIs, and for WPs and WTs with respect to their partners, owners, and beneficiaries. The Treasury Department and the IRS seek comments on coordinating the chapter 3 reporting requirements and existing withholding requirements of these entities under their respective agreements with the reporting and withholding requirements under chapter 4 (including QIs that are foreign branches of U.S. financial institutions). With respect to QIs, the Treasury Department and the IRS do not intend to limit reporting under chapter 4 to QI designated accounts as currently defined in the QI model agreement.

E. Expanded Affiliated Group Requirements

Paragraph (e)(1) of § 1.1471–4 provides the general rule that, for any member of an expanded affiliated group to be a participating FFI or registered deemed-compliant FFI, each FFI that is a member of the group must be either a participating FFI or registered deemed-compliant FFI. Paragraphs (e)(2), (3), and (4) provide exceptions to this general rule for certain branches, FFI affiliates, and QIs. Paragraph (e)(1) also provides that each FFI that is a member of an expanded affiliated group must complete a registration form with the IRS and agree to all the requirements for the status for which it applies with respect to all of the accounts it maintains.

Paragraph (e)(2) permits an FFI to be a participating FFI notwithstanding that one or more of its branches cannot satisfy all of the requirements of the FFI agreement. Paragraph (e)(2)(ii) defines a branch as a unit, business or office of the FFI that is treated as a branch under the regulatory regime of the country in which it is located or is otherwise regulated under the laws of such country as separate from other offices, units, or branches of the FFI, and maintains books and records separate from the books and records of the participating FFI (and any other of its branches). Further, all units, businesses, or offices of a participating FFI in a single country (including the country of organization or incorporation) are treated as a single branch. Paragraph (e)(2)(iii) defines a *limited branch* as a branch that cannot report the information required to be reported with respect to its U.S. accounts to the IRS and cannot close or transfer such accounts, or that cannot withhold on its recalcitrant account holders or accounts held by nonparticipating FFIs and cannot close or transfer such accounts. To qualify for limited branch status, the FFI, as part of its registration process, must: (i) Identify the relevant jurisdiction of each branch for which it seeks limited branch status; (ii) agree that each such branch will identify its account holders under the due diligence requirements applicable to participating FFIs; (iii) retain account holder documentation pertaining to those identification requirements for six years from the effective date of its FFI agreement; (iv) report to the IRS with

respect to its accounts that it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the branch; (v) treat each such branch as a separate entity for purposes of withholding; (vi) agree that each such branch will not open new accounts that it is required to treat as U.S. accounts or accounts held by nonparticipating FFIs; and (vii) agree that each such branch will identify itself to withholding agents (including affiliates of the FFI) as a nonparticipating FFI. Paragraph (e)(2)(v) requires a participating FFI to withhold on certain withholdable payments that it is considered to receive on behalf of a limited branch. Paragraph (e)(2)(vi) provides that a branch will cease to be a limited branch after the earlier of December 31, 2015, or the beginning of the third calendar quarter following the date on which the branch is no longer prohibited from complying with the requirements of the FFI agreement. In order to retain its status, a participating FFI must notify the IRS by such date that the branch will comply with the FFI agreement.

Paragraph (e)(3) permits an FFI that is a member of an expanded affiliated group to obtain status as a participating FFI notwithstanding that one or more members of the group cannot satisfy the requirements of the FFI agreement. Similar to the requirements under paragraph (e)(2) for a limited branch, paragraph (e)(3)(ii) defines a *limited FFI* as an FFI that, under the laws of each jurisdiction that apply with respect to the accounts maintained by the affiliate, cannot report or withhold as required under the FFI agreement. Paragraph (e)(3)(iii) also provides registration requirements for limited FFI status that are similar to those for limited branches. Paragraph (e)(3)(iv) requires participating and deemed-compliant FFIs to treat limited FFIs as nonparticipating FFIs with respect to withholdable payments made to these affiliates. No withholding will be required, however, with respect to foreign passthru payments made to a limited FFI. Paragraph (e)(3)(v) provides that an FFI will cease to qualify as a limited FFI either after December 31, 2015, or the beginning of the third calendar quarter following the date on which the FFI is no longer prohibited from complying with the requirements of the FFI agreement. Participating and deemed-compliant FFIs that are members of the same expanded affiliated group will retain their status if, by such date, the FFI that ceased to be limited notifies the IRS that it will comply with the FFI agreement.

Paragraph (e)(4) provides a special rule for QIs. The Treasury Department and the IRS intend to require all QIs that are FFIs to become participating FFIs. Therefore, in order for an FFI to renew its QI agreement for chapter 3 purposes, an FFI will be required to be a participating FFI. However, paragraph (e)(4) permits QIs to retain their status as a QI for a limited period of time (until December 31, 2015) even though the QI cannot comply with the provisions of an FFI agreement. In such case, the QI is treated as a limited FFI and must identify itself to its withholding agents as a nonparticipating FFI.

VI. Section 1.1471–5—Section 1471 Definitions

Section 1.1471–5 sets forth additional definitions that are applicable to the regulations under section 1471 and to the FFI agreement.

A. U.S. Account

Paragraph (a)(2) of § 1.1471–5 defines the term *U.S. account* as any financial account maintained by a financial institution that is held by one or more specified U.S. persons or U.S. owned foreign entities. Paragraph (a)(3) generally provides that an account is held by the person listed or identified as the holder of such account with the financial institution that maintains the account, even if that person is a flow-through entity. Paragraphs (a)(3)(ii) through (v) set forth exceptions and other rules that supplement the general rule for determining the holder of an account. For accounts held by a grantor trust, the grantor is treated as the owner of the account or assets in the account to the extent required under the principles of sections 671 through 679. For accounts held by agents, investment advisors, and similar persons, the person on whose behalf such person is acting is treated as the account holder. For accounts held jointly, each joint holder will be treated as owning the account. Finally, for accounts that are insurance and annuity contracts, the account holder is the person who can access the cash value of the contract or change the beneficiary, or, if there is no such person, the account holder is the beneficiary.

Paragraph (a)(4) sets forth the exception from U.S. account status provided in section 1471(d)(1)(B) for any depository account held by one or more individuals with an aggregate balance or value that does not exceed $50,000. Paragraph (a)(4)(ii) provides aggregation rules for determining the aggregate balance or value of the account for purposes of this exception to U.S. account status. The same rules apply to both preexisting and new accounts. Generally, the rules provide that depository accounts are aggregated with other depository accounts only for purposes of applying the exception from U.S. account status provided in section 1471(d)(1)(B).

B. Financial Account

Section 1471(d)(2) provides that except as provided by the Secretary, the term *financial account* means, with respect to any financial institution, any depository account maintained by such financial institution; any custodial account maintained by such financial institution; and any equity or debt interest in such financial institution (other than interests which are regularly traded on an established securities market). In addition, the technical explanation of the HIRE Act prepared by the Joint Committee on Taxation states that the Secretary may ''prescribe special rules addressing circumstances in which certain categories of companies, such as insurance companies, are financial institutions or the circumstances in which certain contracts or policies, for example annuity contracts or cash value life insurance contracts, are financial accounts or United States accounts * * *.'' Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions Contained in Senate Amendment 3310,* the ''Hiring Incentives to Restore Employment Act,'' under Consideration by the Senate,'' (JCX–4–10), February 23, 2010, at 44 (Technical Explanation).

Paragraph (b)(1) of § 1.1471–5 defines the term *financial account.* First, the proposed regulations define a *depository account* to include a commercial, checking, savings, time, or thrift account, an account evidenced by a certificate of deposit or similar instruments, and any amount held with an insurance company under an agreement to pay interest. A *custodial account* is defined to include an account that holds any financial instrument or contract held for investment for the benefit of another person. The proposed regulations exclude from the definition of a financial account certain savings accounts (including both retirement and pension accounts and nonretirement savings accounts) that meet certain requirements with respect to tax treatment and the type and amount of contributions. They also exclude any account that otherwise constitutes a financial account if it is held solely by one or more exempt beneficial owners described in § 1.1471–6 or by nonparticipating FFIs that hold the

account as intermediaries solely on behalf of one or more such owners. Thus, a participating FFI need not determine whether such an account is a U.S. account or held by a recalcitrant account holder.

The proposed regulations also provide guidance on the treatment of debt or equity as a financial account. First, as provided in section 1471(d)(2)(C), debt or equity that is regularly traded on an established securities market is not a financial account. For this purpose, debt or equity interests are considered regularly traded on an established securities market if trades in such interests are effected, other than in *de minimis* quantities, on such market or markets on at least 60 days during the prior year, and the aggregate number of such interests that are traded on such market or markets during the prior year is at least ten percent of the average number of such interests outstanding during the prior year.

Second, the proposed regulations provide that an equity interest includes a capital or profits interest in a partnership and, in the case of a trust that is a financial institution, the interest of an owner under sections 671 through 679 and a beneficial interest in a trust described in § 1.1473–1(b)(3).

Third, the proposed regulations provide that an equity or debt interest in a financial institution is a financial account if it is an equity or debt interest in a financial institution that is engaged primarily in the business of investing, reinvesting, or trading securities. In the case of a financial institution that is engaged in a banking or similar business, holds financial assets for the account of others, or is an insurance company, equity or debt instruments in such financial institution will constitute financial accounts only if the value of those interests is determined, directly or indirectly, primarily by reference to assets that give rise to withholdable payments.

Finally, to address the circumstances in which certain insurance or annuity contracts are financial accounts, paragraph (b)(1)(iv) includes in the definition of a financial account insurance contracts that include an investment component—namely cash value insurance contracts and annuity contracts. The proposed regulations exclude from the definition of financial account insurance contracts that provide pure insurance protection (such as term life, disability, health, and property and casualty insurance contracts).

C. U.S. Owned Foreign Entity

Paragraph (c) of § 1.1471–5 defines the term *U.S. owned foreign entity* as any foreign entity that has one or more substantial U.S. owners. Additionally, paragraph (c) provides that an owner-documented FFI will be treated as a U.S. owned foreign entity if it has one or more direct or indirect owners that are specified U.S. persons, whether or not it has a substantial U.S. owner.

D. Financial Institution and FFI

Section 1471(d)(4) and § 1.1471–5(d) provide that an FFI means any financial institution that is a foreign entity. A territory financial institution is not an FFI.

Section 1471(d)(5) provides that except as otherwise provided by the Secretary, the term *financial institution* means any entity that: (i) Accepts deposits in the ordinary course of a banking or similar business; (ii) holds as a substantial portion of its business financial assets for the account of others; or (iii) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interests, commodities (as defined in section 475(e)(2)), or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities.

In addition, the Technical Explanation states that the Secretary has authority to ''prescribe special rules addressing circumstances in which certain categories of companies, such as insurance companies, are financial institutions.'' Technical Explanation, at 44.

Paragraph (e) of § 1.1471–5 provides guidance on the types of entities that constitute ''financial institutions.'' Paragraph (e)(2) lists the activities that constitute a ''banking or similar business'' for a deposit-taking institution, and clarifies that entities engaged in a banking or similar business include, but are not limited to, entities that would qualify as a ''bank'' under section 585(a)(2) (including ''banks'' as defined in section 581 and any corporation to which section 581 would apply except for the fact that it is a foreign corporation). Instead, the proposed regulations provide that the determination of whether an entity conducts a banking or similar business is based on the character of the business conducted, and the fact that the entity is subject to local regulation is relevant, but not necessarily determinative.

Paragraph (e)(3) defines what constitutes holding financial assets as a ''substantial portion'' of an entity's business by reference to a bright line test based on gross income. As in the case of deposit-taking institutions, the fact that an entity is subject to the banking or credit laws of one or more jurisdictions is relevant to, but not necessarily determinative of, financial institution status.

The proposed regulations also provide guidance regarding whether an entity is engaged primarily in the business of investing, reinvesting, or trading securities and other relevant assets. Paragraph (e)(1)(iii) includes within the types of securities that cause a financial institution to be engaged primarily in the business of investing, reinvesting, or trading notional principal contracts and insurance and annuity contracts that are traded, held for investment, or securitized. Paragraph (e)(4) provides that an entity is engaged primarily in the business of investing, reinvesting, or trading if the entity's gross income from those activities is at least 50 percent of the entity's total gross income over the testing period.

Paragraph (e)(1)(iv) of the proposed regulations provides that an entity that is an insurance company and issues (or is obligated to make payments with respect to) a cash value insurance policy or an annuity contract is a financial institution.

Finally, the proposed regulations describe entities that are excluded from the definition of a financial institution and are treated as excepted NFFEs. These entities are certain nonfinancial holding companies, certain start-up companies, nonfinancial entities that are liquidating or emerging from reorganization or bankruptcy, hedging/financing centers of a nonfinancial group, and entities described in section 501(c).

E. Deemed-Compliant FFIs

Paragraph (f) of § 1.1471–5 describes the FFIs that will be deemed compliant with the requirements of section 1471(b), and therefore exempt from withholding under section 1471(a) and (b). The categories of deemed-compliant FFIs described in these proposed regulations are broader than the categories of deemed-compliant FFIs described in Notice 2011–34. Paragraph (f) provides for two general types of deemed-compliant FFI: registered and certified deemed-compliant FFIs. A registered deemed-compliant FFI generally is required to register with the IRS to declare its status as deemed-compliant and to attest to the IRS that it satisfies certain procedural requirements. The categories of registered deemed-compliant FFIs are

local FFIs, nonreporting members of participating FFI groups, qualified investment vehicles, restricted funds, and FFIs that comply with the requirements of section 1471(b) under an agreement between the United States and a foreign government.

To qualify as a local FFI, generally, each FFI in the group (or in the case of a standalone FFI, the FFI) must meet certain licensing and regulation requirements. In addition, it must have no fixed place of business outside its country of organization and must not solicit account holders outside its country of organization. In addition, 98 percent of the accounts maintained by the FFI must be held by residents of the FFI's country of organization, and the FFI must be subject to reporting or withholding requirements in its country of organization with respect to resident accounts. For this purpose, an FFI that is organized in a European Union (EU) Member State may treat account holders that are residents of other EU Member States as residents of the country in which the FFI is organized. The Treasury Department and the IRS included this rule for FFIs established in EU Member States because financial institutions in EU Member States have common tax reporting or withholding obligations with respect to EU residents. A local FFI must also establish policies and procedures to ensure that it does not open or maintain accounts for specified U.S. persons that are not residents in the country in which the FFI is organized, for nonparticipating FFIs, or for entities controlled or beneficially owned by specified U.S. persons, and must perform due diligence with respect to its entity accounts and certain individual accounts.

The registered deemed-compliant category for nonreporting members of participating FFI groups permits an FFI that is a member of an expanded affiliated group that includes at least one participating FFI to become a deemed-compliant FFI if it transfers any preexisting accounts that are identified under specified procedures as U.S. accounts or accounts held by nonparticipating FFIs to an affiliate that is a participating FFI or U.S. financial institution. Paragraph (f)(1)(i)(B) also requires the nonreporting member to implement policies and procedures to ensure that if it opens or maintains any U.S. accounts or accounts held by nonparticipating FFIs, it either transfers any such accounts to an affiliate that is a participating FFI or U.S. financial institution or becomes a participating FFI itself, in either case within 90 days of having opened the account or of having knowledge or reason to know of a change in circumstances resulting in an account becoming a U.S. account or an account held by a nonparticipating FFI. In response to comments, this type of deemed-compliant FFI is not limited to those FFIs that operate within a single country and that solicit account holders in such country, as was required under Notice 2011–34.

Paragraph (f)(1)(i)(C) sets forth a deemed-compliant category for qualified investment vehicles. In general, an FFI regulated as a collective investment vehicle (CIV) is a qualified investment vehicle if all holders of record of a direct interest in the FFI are participating FFIs, deemed-compliant FFIs, or exempt beneficial owners.

In response to comments, paragraph (f)(1)(i)(D) provides a separate deemed-compliant category for an FFI that is regulated as an investment fund under the law of its country of organization and for which each distributor of the investment fund's interests is a participating FFI, a registered deemed-compliant FFI, a nonregistering local bank, or a restricted distributor (defined in paragraph (f)(4)). Paragraph (f)(1)(i)(D) requires that each agreement that governs the distribution of the investment fund's debt or equity interests (other than interests which are both distributed by and held through a participating FFI) prohibit sales of debt or equity interests in the fund to U.S. persons, nonparticipating FFIs, or passive NFFEs with one or more substantial U.S. owners, and its prospectus must indicate that sales to U.S. persons, passive NFFEs, and nonparticipating FFIs (other than interests which are both distributed by and held through a participating FFI) are prohibited. The FFI must also establish procedures to review preexisting direct accounts and ensure proper treatment of new direct accounts.

Paragraph (f)(1)(ii) sets forth the procedural requirements for registered deemed-compliant FFIs and provides that a registered deemed-compliant FFI must certify to the IRS that it meets the requirements of its applicable deemed-compliant category, agrees to the conditions for deemed-compliant status, and will renew its certification every three years (or earlier if there is a change in circumstance).

The certified categories of deemed-compliant FFIs are nonregistering local banks, retirement plans, non-profit organizations, certain owner-documented FFIs, and FFIs with only low-value accounts. Institutions that satisfy the requirements of these categories are not required to register with the IRS, but each will certify to the withholding agent that it meets the requirements of its certified deemed-compliant category on a Form W–8.

To qualify as a nonregistering local bank, generally, a bank must offer basic banking services, operate solely in its country of incorporation (or if it is a member of an expanded affiliated group, all members must operate in the same country), and the assets on each member FFI's balance sheet must be no more than $175 million (and the entire expanded affiliated group must have no more than $500 million on their combined balance sheets).

Paragraph (f)(2)(ii) describes the requirements for retirement plans to qualify for certified deemed-compliant status. Generally, the FFI must be organized for the provision of retirement or pension benefits under the law of each country in which it is established or in which it operates. Contributions to the FFI must consist only of employer, government, or employee contributions and must be limited by reference to earned income. In addition, no single beneficiary may have a right to more than five percent of the FFI's assets. Finally, contributions to the FFI must be excluded from the income of the beneficiary and/or taxation of the income attributable to the beneficiary must be deferred under the laws of the country in which the FFI is organized or operates, or the FFI must receive 50 percent or more of its total contributions from the government or employers. Alternative criteria are provided for FFIs that provide retirement or pension benefits and that have fewer than 20 participants and meet certain other requirements.

Paragraph (f)(2)(iii) describes the requirements for non-profit organizations to qualify for certified deemed-compliant status. A non-profit organization will qualify for certified deemed-compliant status if it: (i) Is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes; (ii) is exempt from income tax in its country of residence; (iii) has no shareholders or members that have a proprietary interest in its income or assets; and (iv) is subject to restrictions preventing the private inurement of its income and assets.

Paragraph (f)(2)(iv) describes the requirements for FFIs with only low-value accounts to qualify for certified deemed-compliant status. An FFI with only low-value accounts will qualify for certified deemed-compliant status if: (i) The FFI is an FFI solely because it accepts deposits in the ordinary course of a banking or similar business as

described in § 1.1471–5(e)(1)(i) or, as a substantial portion of its business, holds financial assets for the account of others as described in § 1.1471–5(e)(ii); (ii) no financial account maintained by the FFI (or, in the case of an FFI that is a member of an expanded affiliated group, by any member of the expanded affiliated group) has a balance or value in excess of $50,000; and (iii) the FFI has no more than $50 million in assets on its balance sheet (and, in the case of an FFI that is a member of an expanded affiliated group, the entire expanded affiliated group has no more than $50 million in assets on its consolidated or combined balance sheet).

Paragraph (f)(3) provides, generally, that an owner-documented FFI is eligible for certified deemed-compliant status if it is not described in § 1.1471–5(e)(1)(i), (ii), or (iv) and is not affiliated with another FFI described in those sections, it maintains no financial accounts for nonparticipating FFIs, it does not issue debt that constitutes a financial account in excess of $50,000 to any person, it provides a withholding agent with all required documentation regarding its owners, and the withholding agent agrees to report to the IRS the information required with respect to any of the owners of the owner-documented FFI that are specified U.S. persons. Because an owner-documented FFI is required to provide each withholding agent with documentation and the withholding agent must agree to report on behalf of the owner-documented FFI, an owner-documented FFI may have certified deemed-compliant status only with respect to a specific withholding agent.

The Treasury Department and the IRS are considering how to address specific organizations or classes of organizations that may not be deemed to comply with the requirements of section 1471(b) due to their use to circumvent the purposes of chapter 4.

In addition, the Treasury Department and the IRS are considering how the conditions for deemed-compliant status should apply where an FFI is described in more than one subparagraph of section 1471(d)(5), because, for example, it accepts deposits in the ordinary course of a banking business and, as a substantial portion of its business, holds financial assets for the account of others.

F. Recalcitrant Account Holder

Paragraph (g) defines the term *recalcitrant account holder* and provides guidance on when an account holder will be treated as recalcitrant. Generally, a recalcitrant account holder is any holder of an account maintained by a participating FFI if the account holder is not an FFI and the account holder either (i) Fails to comply with the participating FFI's request for documentation or information to establish whether the account is a U.S. account, (ii) fails to provide a valid Form W–9 upon the request of the participating FFI, (iii) fails to provide a correct name and TIN upon request of the FFI after the participating FFI receives notice from the IRS indicating a name/TIN mismatch, or (iv) fails to provide a valid and effective waiver of foreign law if foreign law prevents reporting with respect to the account holder by the participating FFI. The IRS intends to extend the ''B'' notice process currently used for name/TIN mismatches in Form 1099 reporting to the reporting of U.S. accounts and will notify a participating FFI if a name and TIN combination provided on a form is incorrect. The Treasury Department and the IRS are considering whether participating FFIs should be required to use the IRS on-line TIN matching program to ensure that its U.S. account holders have provided the correct name and TIN combination prior to filing the form for reporting U.S. accounts with the IRS, but if this requirement were adopted, it would begin no earlier than January 1, 2015. Paragraph (g) also sets forth the rules for when a participating FFI will start and cease treating an account holder as recalcitrant.

G. Passthru Payments

Paragraph (h) of § 1.1471–5 defines a passthru payment as any withholdable payment and any foreign passthru payment. The proposed regulations reserve on the definition of a foreign passthru payment, but see the discussions regarding the proposed implementation of reporting on certain foreign payments in section X of this preamble and withholding in section XIX of this preamble.

H. Expanded Affiliated Groups

Section 1471(e)(2) provides the definition of an expanded affiliated group for purposes of section 1471(e) and chapter 4, and § 1.1471–5(i) incorporates that definition.

VII. Section 1.1471–6—Exempt Payments to Certain Beneficial Owners

Section 1.1471–6 describes classes of beneficial owners that are exempt from withholding under section 1471(a) pursuant to section 1471(f) (exempt beneficial owners). The classes of persons treated as exempt beneficial owners are: foreign governments, political subdivisions of a foreign government, and wholly owned instrumentalities and agencies of a foreign government; international organizations and wholly owned agencies or instrumentalities of an international organization; foreign central banks of issue; governments of U.S. territories; and certain foreign retirement plans.

In general, the principles of section 892 and the regulations thereunder apply in determining whether a beneficial owner qualifies as a foreign government. The definition of a controlled entity of a foreign government has been expanded from the definition set forth in § 1.892–2T to include entities that are owned and controlled by more than one foreign sovereign, and paragraph (b)(5) prescribes that such entities will qualify as exempt beneficial owners except when they are financial institutions described in section 1471(d)(5)(A) or (B) and the regulations thereunder. The principles of section 7701(a)(18) and the regulations thereunder generally apply to determine whether a beneficial owner qualifies as an international organization. The principles of section 895 and the regulations thereunder generally apply to determine whether a beneficial owner qualifies as a foreign central bank. Additionally, a foreign central bank is exempt from withholding under chapter 4 with respect to income earned on collateral held by the foreign central bank in the normal course of its operations.

Under paragraph (f), certain foreign retirement funds will qualify as exempt beneficial owners. Specifically, a fund that is eligible for the benefits of an income tax treaty with the United States with respect to income that the fund derives from U.S. sources and that is generally exempt from income tax in that country is an exempt beneficial owner if it operates principally to administer or provide pension or retirement benefits. A fund that is formed for the provision of retirement or pension benefits under the law of the country in which it is established will also qualify as an exempt beneficial owner if: (i) It receives only employer, government, or employee contributions that are limited by reference to earned income, (ii) no single beneficiary has a right to more than five percent of the fund's assets, and (iii) its investment income is exempt from tax under the laws of the country in which it is organized or in which it operates as a result of its status as a retirement or pension plan in that country, or it receives 50 percent or more of its total contributions from the government or employers.

An entity that is described in § 1.1471–6(g) and is wholly owned by one or more exempt beneficial owners is also an exempt beneficial owner.

VIII. Section 1.1472–1—Withholdable Payments to Non-Financial Foreign Entities (NFFEs)

A. General Rules for Withholding Under Section 1472

Section 1.1472–1 provides rules regarding the withholding and reporting requirements of section 1472. Except as otherwise provided in section 1472 and § 1.1472–1, a withholding agent must withhold tax of 30 percent of any withholdable payment made to an NFFE, unless the beneficial owner of such payment is the NFFE or another NFFE, the withholding agent can treat the beneficial owner as an NFFE that does not have any substantial U.S. owners or as an NFFE that has identified its substantial U.S. owners, and the withholding agent reports the required information with respect to any substantial U.S. owners. Paragraph (b)(2) also provides a rule to coordinate the withholding obligations under these proposed regulations with the withholding obligations set forth in an applicable FFI agreement for withholdable payments made by a participating FFI. In general, a participating FFI that complies with its FFI agreement is considered to have satisfied its obligations under section 1472(a) and § 1.1472–1.

C. Exceptions From Withholding Under Section 1472

Paragraph (c) contains exceptions to the withholding rules described in § 1.1472–1(b) for withholdable payments made to certain excepted NFFEs. Paragraphs (c)(1)(i) through (vi) of § 1.1472–1 identify categories of entities that are exempt from withholding under section 1472(a) and (c). Paragraph (c)(1)(iv) of § 1.1472–1 expands the statutory exception to include a government of a U.S. territory. Paragraph (c)(1)(v) provides an exception for an NFFE that is an active NFFE. An active NFFE is any NFFE if less than 50 percent of its gross income for the calendar year is passive income and less than 50 percent of its assets are assets that produce or are held for the production of dividends, interest, rents and royalties (other than those derived in the active conduct of a trade or business), annuities, or other passive income. Paragraph (c)(1)(vi) clarifies that an entity that is the recipient and beneficial owner of a withholdable payment that is described in § 1.1471–5(e)(5) shall not be subject to withholding under section 1472.

Paragraph (c)(2) provides that payments to a WP and a WT are not subject to withholding under section 1472(a). This is because a WP or WT must generally assume primary withholding responsibilities with respect to reportable amounts under chapter 3 on behalf of their partners, owners, or beneficiaries, respectively, pursuant to their withholding agreements with the IRS under section 1441. Because WP and WT agreements are expected to be modified to take into account withholding obligations under chapter 4, it is not necessary to withhold under section 1472(a) on payments to such entities. Instead, the WP or WT will be required to assume primary chapter 4 withholding responsibility and to identify the chapter 4 status of its partners, owners, or beneficiaries to determine whether it must withhold under section 1471 or 1472.

D. Establishing When a Withholding Agent May Treat a Withholdable Payment as Made to a Payee

Paragraphs (d)(1) through (5) of § 1.1472–1 provide rules that clarify the coordination between §§ 1.1472–1 and 1.1471–3. In general, for purposes of § 1.1472–1, a withholding agent may treat the payee of a payment (as determined under § 1.1471–3) as the beneficial owner of the payment, and must determine the chapter 4 status of such payee in accordance with the rules of § 1.1471–3. In addition, paragraph (d)(5) provides that the presumption rules under § 1.1471–3(f) must be applied to determine the chapter 4 status of a payee when the withholding agent does not have valid documentation that it can rely upon to determine the chapter 4 status of the payee.

E. Information Reporting Requirement

Paragraph (e) of § 1.1472–1 provides information reporting requirements with respect to withholdable payments made to a payee and the income tax filing requirement of a withholding agent that withholds under § 1.1472–1. In addition, it sets forth the information reporting rules with respect to substantial U.S. owners of certain NFFEs.

IX. Section 1.1473–1—Section 1473 Definitions

A. Withholdable Payment

Generally, paragraph (a) of § 1.1473–1 defines withholdable payment as any payment of U.S. source FDAP income and any gross proceeds from the sale or other disposition of any property which may produce interest or dividends from sources within the United States with respect to a sale or disposition occurring after December 31, 2014. For chapter 4 purposes, the term *FDAP income* means fixed or determinable annual or periodic income as defined for purposes of chapter 3 (without regard to the exemptions from withholding). Paragraph (a)(2)(i)(B) clarifies that an exclusion from withholding under chapter 3 or an exclusion from taxation under section 881 does not exclude such amount from the definition of U.S. source FDAP for the purpose of determining whether a payment is a withholdable payment under chapter 4. In addition, paragraphs (a)(2)(vi) and (a)(3)(iii)(B) provide that interest accrued between payment dates is not treated as FDAP, but is instead treated as gross proceeds solely for purposes of chapter 4.

To determine the source of income, paragraph (a)(2)(ii)(A) cross-references the rules provided in sections 861 through 865 and other relevant Code provisions. However, as provided in section 1473(1)(C), paragraph (a)(2)(ii)(B) provides that interest described in section 861(a)(1)(A)(i) or (ii) (bank deposit interest paid with respect to offshore accounts) is treated as income from sources within the United States for purposes of the definition of withholdable payment. Similar to the rule that applies for purposes of withholding under chapter 3, paragraph (a)(2)(ii)(A) provides that if a withholding agent cannot determine the source of a payment at the time the payment is made, the payment is treated as U.S. source.

Generally, paragraph (a)(3) defines the term *sale or other disposition* as any sale, exchange, or other disposition that requires the recognition of gain or loss under section 1001 from property of a type that can produce interest or dividends from sources within the United States. Paragraph (a)(3)(i)(C) provides a special rule that limits gross proceeds paid by a clearing organization to the net amount paid or credited to an account of a member of the clearing organization if the clearing organization settles sales and purchases of securities between member organizations on a net basis. Paragraph (a)(3)(ii) provides rules for determining when property is of a type that can produce interest or dividends from sources within the United States. Paragraph (a)(3)(iii)(A) provides rules for determining when gross proceeds are paid. Paragraph (a)(3)(iii)(B) sets forth the rules for determining the amount of gross

proceeds from a sale or other disposition.

Paragraph (a)(4) provides a list of payments that are excluded from the definition of withholdable payments. This list includes original issue discount from certain short-term obligations, income that is taken into account as effectively connected with the conduct of a trade or business in the United States, certain payments in the ordinary course of the withholding agent's business, gross proceeds from the sale of property that can produce income that is excluded from the definition of withholdable payment, and certain broker transactions that involve the sale of fractional shares. While the proposed regulations do not explicitly exempt payments with respect to State and local bonds, interest on State and local bonds is excluded from gross income under section 103, and such interest is thus not a withholdable payment. Moreover, interest that is excluded from gross income under section 103 is not treated as gross income from sources within the United States under section 861(a), and thus gross proceeds from the sale of bonds that give rise to interest that is excluded under section 103 are not withholdable payments.

Paragraph (a)(5) provides special payment rules for flow-through entities with respect to U.S. source FDAP income allocated to partners, owners, and beneficiaries in these entities that mirror the rules under § 1.1441–5. Paragraph (a)(5) reserves on how payments of gross proceeds are to be allocated to such persons.

B. Substantial U.S. Owner

Paragraph (b) provides the definition of *substantial U.S. owner.* Generally, the term *substantial U.S. owner* means any specified U.S. person (as defined in paragraph (c)) that owns, directly or indirectly, more than ten percent of the stock of a corporation, or with respect to a partnership, more than ten percent of the profits interests or capital interests in such partnership. For trusts, a substantial U.S. owner is any specified U.S. person that holds, directly or indirectly, more than ten percent by value of the beneficial interests in such trust, or with respect to a grantor trust, any specified U.S. person that is an owner of such grantor trust.

Paragraphs (b)(2) and (3) set forth attribution rules to determine indirect ownership of stock, partnership interests, and beneficial trust interests. These rules are based on the rules provided in § 1.958–1 for determining stock ownership of controlled foreign corporations.

Paragraph (b)(3) provides the rules for determining whether a specified U.S. person will be treated as directly or indirectly holding a beneficial interest in a foreign trust. These rules are generally coordinated with the rules provided in the recently published temporary regulations under section 6038D, regarding information reporting requirements of certain U.S. persons with respect to their interests in foreign trusts. See TD 9567, 76 FR 78560 (December 19, 2011). Paragraph (b)(4) provides a special rule under which a beneficiary of a trust will not be treated as a substantial U.S. owner if the beneficiary has a right only to discretionary distributions and receives, directly or indirectly, discretionary trust distributions that do not exceed $5,000 in a calendar year or if the beneficiary has a right to mandatory distributions and the value of such beneficiary's interest does not exceed $50,000.

Paragraph (b)(5) provides a special rule for certain investment vehicles and insurance companies that issue (or are obligated to make payments with respect to) cash value insurance or annuity contracts. This rule applies the rules of paragraph (b)(1)(i) through (iii) with a threshold of zero percent, rather than ten percent.

Paragraph (b)(6) specifies that a foreign entity may determine if it has one or more substantial U.S. owners on either the last day of the foreign entity's accounting year or the date on which the foreign entity provides documentation to the withholding agent that maintains the foreign entity's account.

C. Specified U.S. Person

Paragraph (c) provides the definition of specified U.S. person. A specified U.S. person is any U.S. person except as provided in paragraph (c). Persons excluded from the definition of specified U.S. person include: corporations the stock of which is regularly traded on an established securities market; corporations that are affiliates of such corporations; organizations that are exempt from tax under section 501(a); individual retirement plans (as defined in section 7701(a)(37)); real estate investment trusts (as defined in section 856); regulated investment companies (as defined in section 851); common trust funds (as defined in section 584(a)); dealers in securities, commodities, or notional principal contracts (as defined in section 475(c) and (e)) and brokers (as defined in section 6045(c) and § 1.6045–1(a)(1)). The United States and its wholly owned agencies or instrumentalities are also excluded, as are the States, the District of Columbia, the U.S. territories, and any political subdivision or wholly owned agency or instrumentality of any of the foregoing.

D. Withholding Agent

Section 1473(4) defines a withholding agent as any person, in whatever capacity acting, having the control, receipt, custody, disposal, or payment of any withholdable payment. Paragraph (d) incorporates this definition and generally adopts rules similar to those provided in the regulations under chapter 3. Paragraph (d) specifically includes participating FFIs and grantor trusts in the definition of withholding agent. Paragraph (d)(6) provides an exception from withholding agent status for individuals making payments that are not in the ordinary course of the individual's trade or business.

E. Foreign Entity

Paragraph (e) defines the term *foreign entity* as any entity that is not a U.S. person, including a territory entity.

X. Section 1.1474–1—Liability for Tax Withheld

Paragraph (a) provides that a withholding agent that fails to deposit tax that it is required to withhold under chapter 4 is liable for such tax and applicable penalties and additions to tax. Paragraph (b) provides rules for a withholding agent's payment of withholding tax. Paragraph (c)(1) provides rules for the filing of income tax returns by withholding agents for years beginning with the 2014 calendar year and prescribes the payments required to be reported on such returns. These rules generally mirror the rules for returns that are filed under chapter 3. Such returns are required to be filed on Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,* the same income tax return described in § 1.1461–1(b)(1) for withholding agents to report income paid and taxes withheld under chapter 3. Paragraph (c)(2) prescribes the requirements applicable to the filing of an amended Form 1042.

Paragraph (d)(1) prescribes the requirements for the filing of information returns by withholding agents to report payments subject to reporting for chapter 4 purposes and the recipients required to be reported on those forms. The IRS anticipates that such returns will be filed on Forms 1042–S, *Foreign Person's U.S. Source Income Subject to Withholding.* Because many FFIs have systems designed to comply with the current Forms 1042 and 1042–S requirements for purposes of payments subject to reporting under

chapter 3, the IRS intends to modify the current Form 1042–S used by withholding agents for chapter 3 purposes to meet the additional reporting requirements of chapter 4 and to coordinate reporting in cases in which withholding under both chapters applies to a payment as described in § 1.1474–6.

Paragraph (d)(2) prescribes the amounts required to be reported on Forms 1042–S and provides for a transitional rule for reporting in 2016 and 2017 requiring participating FFIs to report on a payee-specific basis FDAP income from foreign sources and ''other financial payments'' made in the 2015 and 2016 calendar years to nonparticipating FFIs. The definition of the term ''other financial payment'' is reserved, and comments are requested on the types of payments that should be included in this class of payments for purposes of this reporting requirement.

Paragraph (d)(3) prescribes the information required to be reported on Form 1042–S and paragraph (d)(4) prescribes the methods for reporting. Paragraph (e) references the requirement for filing Forms 1042–S on magnetic media with respect to reporting by financial institutions on such media even when they file under 250 returns for a year. These rules are provided in § 301.1474–1. Paragraph (f) provides for the indemnification of a withholding agent against claims for amounts withheld pursuant to chapter 4. Paragraph (g) provides for the same extensions of time to file Forms 1042 and 1042–S as provided in § 1.1461–1(g). Paragraph (h) states applicable penalties and additions to tax related to these requirements. Paragraph (i) describes the reporting requirements of a withholding agent that reports information with respect to one or more specified U.S. persons that hold an interest in an entity that the withholding agent treats as an owner-documented FFI.

XI. Section 1.1474–2—Adjustments for Overwithholding and Underwithholding of Tax

Section 1.1474–2 provides rules for adjustments for overwithholding and underwithholding of tax that are substantially similar to the rules for chapter 3 withholding under § 1.1461–2, modified to reflect the purposes of chapter 4. Specifically, the definition of overwithholding under § 1.1461–2 has been revised to clarify that for purposes of chapter 4, overwithholding refers to an amount actually withheld that is in excess of both the amount required to be withheld under chapter 4 and the actual tax liability of the beneficial owner of the payment that was subject to withholding under chapter 4. Furthermore, in order to apply the reimbursement and set-off procedure for any overwithheld amount under chapter 4, the withholding agent must obtain valid documentation from the beneficial owner or payee to identify its chapter 4 status and determine that withholding was not required. In addition, the time period for applying the reimbursement procedure under § 1.1474–2(a)(3) differs from § 1.1461–2, because a withholding agent may not reimburse itself by reducing any deposit of tax unless the reduction occurs before the earliest of the due date for filing the Form 1042–S for the calendar year of overwithholding, the date that the Form 1042–S is actually filed by the withholding agent, or the date Form 1042–S is furnished to the recipient.

XII. Section 1.1474–3—Withheld Tax as a Credit to the Beneficial Owner of Income

Section 1.1474–3 provides rules that are substantially similar to the rules under § 1.1462–1 relating to withheld tax as a credit to the beneficial owner of income. Paragraph (a) of § 1.1474–3 generally provides that the beneficial owner of the income or payment to which the withheld tax is attributable is allowed a credit against such beneficial owner's income tax liability in the amount of tax actually withheld under chapter 4. In addition, the beneficial owner shall include in gross income the entire amount of income, if any, of the payment subject to withholding under chapter 4, including amounts that are subject to withholding under the gross-up formula in § 1.1473–1(a)(2)(v). Paragraph (b) of § 1.1474–3 provides that amounts withheld under chapter 4 are deemed to have been paid by the beneficial owner of the item of income subject to withholding under chapter 4.

XIII. Section 1.1474–4—Tax Paid Only Once

Section 1.1474–4 provides that if the tax required to be withheld under chapter 4 is paid by the beneficial owner, payee, or withholding agent, the IRS may not collect from any other, regardless of the original liability for the tax. Furthermore, § 1.1471–4 provides that the person who has an obligation to withhold under chapter 4 and fails to do so is not relieved from liability from interest or penalties for the failure to withhold.

XIV. Section 1.1474–5—Refunds or Credits

Paragraph (a) of § 1.1474–5 provides the general rule that if an overpayment of tax results from the withholding of tax under chapter 4, the beneficial owner of an amount subject to withholding may claim a refund or credit for the overpayment of tax subject to the requirements and limitations described below and in accordance with the rules under chapter 65. For this purpose, a copy of Form 1042–S must be attached to the beneficial owner's income tax return consistent with the requirements described in § 301.6402–3(e), which shall be amended to conform to this requirement.

Section 1.1474–5 also provides that to the extent the overpayment of tax was paid by the withholding agent out of its own funds, such amount may be credited or refunded to the withholding agent. However, paragraph (a) does not permit a nonparticipating FFI that is a withholding agent with respect to a payment to claim a credit or refund. Paragraph (a)(2) also provides that a nonparticipating FFI that is the beneficial owner of the payment to which the withholding under chapter 4 is attributable is not entitled to a credit or refund except to the extent it is entitled to a reduced rate of withholding by reason of any income tax treaty obligation of the United States, and that no interest shall be allowed or paid with respect to such a credit or refund.

Furthermore, § 1.1474–5 implements section 1474(b)(3) by requiring a beneficial owner that is an entity, other than an entity that is entitled to a reduced rate of withholding by reason of any income tax treaty obligation of the United States, to certify to the IRS that the entity does not have any substantial U.S. owners or to identify its substantial U.S. owners or to provide documentation establishing that withholding was not required (for example, establishing an NFFE's status as an excepted NFFE).

The Treasury Department and the IRS are considering what refund procedures may be appropriate with respect to tax withheld on payments to limited FFIs or limited branches (including QIs that are limited FFIs or that have limited branches), and request comments regarding the procedural safeguards that should be put in place to prevent abuse.

XVI. Section 1.1474–6—Coordination of Chapter 4 Withholding With Other Withholding Provisions

Section 1.1474–6 coordinates withholding under chapter 4 with withholding under other provisions of the Code. With respect to a payment subject to withholding under § 1.1441–2(a), paragraph (b)(1) provides that, to the extent withholding is applied under chapter 4 on a payment, a withholding

agent may credit the amount withheld against the withholding agent's liability under section 1441 (or section 1442 or 1443) on the same payment. Paragraph (b)(2) provides rules for purposes of designating the withholding as having been made under section 1441 (or section 1442 or 1443) or chapter 4.

Paragraph (c) provides that an amount subject to withholding under section 1445 is not subject to withholding under chapter 4 and coordinates withholding under chapter 4 with the rules provided in § 1.1441–3(c) for distributions by qualified investment entities and United States real property holding corporations (USRPHCs). Generally, to the extent withholding under section 1441 is applicable to a distribution or a portion of the distribution made by a qualified investment entity or USRPHC, the coordination rule described in paragraph (b)(1) apply to such amounts. Paragraph (c) also adopts the intermediary reliance rule of § 1.1441–3(c)(2)(ii)(C) with respect to determinations made by a USRPHC regarding the portion of the distribution that is estimated to be a dividend. Paragraph (d) generally provides that a withholdable payment or a foreign passthru payment subject to withholding under section 1446 is not subject to withholding under chapter 4 and reserves on the coordination of withholding on distributions of gross proceeds subject to tax under section 1446.

Paragraph (e) reserves on the coordination of withholding under chapter 4 for payments subject to backup withholding under section 3406, and the Treasury Department and the IRS seek comments on how these requirements should be coordinated in light of the objectives of chapter 4 withholding. Paragraph (f) provides an example of the application of the coordination rules.

This section does not provide coordination rules for withholding under chapters 3 and 4 on substitute payments that are part of a chain of securities lending transactions using identical securities. Notice 2010–46 outlined a proposed withholding and reporting framework to reduce instances of potential excessive or cascading taxation and to properly account for the role of financial intermediaries in securities lending transactions. Notice 2010–46 also provided transitional rules that taxpayers may rely on prior to the publication of final regulations. The proposed framework and the transitional rules of Notice 2010–46 are limited to withholding on substitute dividend payments under chapter 3 and do not address chapter 4 withholding. The Treasury Department and the IRS invite comments on issues relating to chapter 4 withholding in the context of the transactions described in Notice 2010–46.

XVII. Section 1.1474–7—Confidentiality of Information

Section 1.1474–7 provides that information obtained to comply with the requirements of chapter 4 may only be used for that purpose or for purposes permitted under section 6103. Paragraph (a) incorporates the regulation under § 1.3406(f)–1(a) for confidentiality of information. Consistent with section 1474(c)(2), paragraph (b) provides an exception to paragraph (a), permitting the disclosure of the identity of a participating FFI or deemed-compliant FFI.

XVIII. Section 301.1474–1—Required Use of Magnetic Media for Financial Institutions Filing Form 1042–S

Section 301.1474–1 provides that a financial institution must file electronically the information returns with respect to withheld taxes for which the institution is liable as a withholding agent under section 1461 or 1474(a), as the limitation for persons required to file fewer than 250 returns during the tax year does not apply.

Paragraph (b) provides that the Commissioner may grant hardship waivers from the requirement to file electronically, although it is intended that these waivers be granted only in exceptional cases. The Treasury Department and the IRS intend to issue published guidance setting forth the procedures by which a taxpayer may request a hardship waiver. Comments are requested regarding the waiver provision in this regulation.

Paragraph (c) provides that penalties may be imposed under sections 6723 and 6724 on a financial institution that fails to comply with this electronic filing requirement.

XIX. Future Guidance & Further Requests for Comments

The Treasury Department and the IRS expect to issue future guidance on topics not covered in these proposed regulations. This guidance will take a variety of forms. For example, the IRS expects to issue a draft model FFI agreement and draft forms relating to chapter 4 reporting. In addition, future regulations will provide guidance on substantive and procedural issues not addressed in these proposed regulations. The discussion below addresses certain significant aspects of future guidance.

A. Registration Process Preview

1. Registering as Participating FFIs or Deemed-Compliant Entities

The IRS will make available an online process for registering FFIs as participating FFIs or deemed-compliant FFIs no later than January 1, 2013. The online process will allow each FFI to register for participating, limited, or registered deemed-compliant FFI status, enter into an FFI agreement, complete a required certification, and obtain an FFI–EIN, if applicable. Special registration procedures must be followed by FFIs that are members of an expanded affiliated group (FFI group). As part of the registration process, an online FFI account will be created by the IRS for each FFI, and it is anticipated that FFIs will be able to manage their account information, including making annual certifications, if required, electronically. The online account will allow the IRS and FFIs to more effectively manage and update FFI information to ensure that it is current.

2. Expanded Affiliated Groups

Each member of an FFI group must designate a lead FFI (Lead FFI) to initiate and manage the online registration process for the FFI group. The Lead FFI that assumes this role must enter the system to register itself and, as part of that process, identify each FFI that is a member of the FFI group (FFI Member) that will register for participating, limited, or registered deemed-compliant FFI status. Each FFI member, including the Lead FFI, will be assigned a unique FATCA identifier (FATCA ID) to be used in completing the registration process and associating FFI group members with the FFI group. Each FFI Member must enter the online registration system to complete its registration as a participating FFI, limited FFI, or registered deemed-compliant FFI. The Lead FFI will be responsible for managing the FFI group information and will be able to add or remove members from the FFI group to reflect updated information. For the registration of any FFI member to be complete, and for its chapter 4 status as a participating, limited, or deemed-compliant FFI to be obtained, each FFI member must have completed its registration process.

More information about the online registration process will be provided in future guidance and instructions to the registration form.

B. QIs, WPs, and WTs

Apart from any period of limited FFI status, an FFI that is a QI, WP, or WT will be required to fulfill the chapter 4

reporting and withholding requirements of a participating FFI to retain its status under chapter 3. The IRS intends to amend each of these withholding agreements to incorporate the requirements of a participating FFI under chapter 4. The Treasury Department and the IRS also intend for this purpose to modify the descriptions of the QI, WP, and WT agreements under §§ 1.1441–1(e)(5), 1.1441–5(c)(2), and 1.1441–5(e)(5)(v), respectively. Additionally, the Treasury Department and the IRS are considering, as an alternative to external audits, coordinating the audit requirements for QIs, WPs, and WTs (including their chapter 3 requirements) with the verification procedures described in § 1.1471–4(a)(6) applicable to other participating FFIs. Comments are requested on these requirements, including reasonably objective standards under which such entities (and other participating FFIs) would determine whether they have found material failures in their compliance with the requirements of their respective agreements warranting disclosure to the IRS (as referenced in § 1.1471–4(a)(6)).

C. Withholding Certificates

The IRS anticipates that the Form W–8 series will be updated to request additional information from a taxpayer that would be relevant to establishing a taxpayer's chapter 4 status, for example, by including a new field for an FFI–EIN.

D. Additional Categories of Deemed-Compliant FFIs

The Treasury Department and the IRS request comments regarding whether there should be additional categories of deemed-compliant FFIs not addressed in the proposed regulations. Consideration is being given, for example, to providing a category of deemed-compliant FFIs for entities that issue certain insurance or annuity contracts that has requirements that are analogous to the requirements for local FFIs.

E. Passthru Payments

While these proposed regulations provide that withholding on passthru payments will begin no sooner than January 1, 2017, the Treasury Department and the IRS are considering ways to ease the compliance burdens associated with passthru payment withholding. Among the alternatives the Treasury Department and the IRS are considering is whether to allow certain FFIs to rely upon a safe harbor passthru percentage if the FFI does not elect to calculate its exact passthru percentage. In addition, the Treasury Department and the IRS are considering whether and to what extent to allow rounding conventions to limit the number of possible passthru percentages that could apply. Comments are requested on these and other recommendations to ease the compliance burden associated with foreign passthru payment withholding.

In addition, future guidance will prevent U.S. and territory financial institutions from serving as ''blockers'' with respect to foreign passthru payment reporting and withholding. The Treasury Department and the IRS are aware that, because a U.S. withholding agent is currently required to withhold only with respect to withholdable payments, while a participating FFI is generally required to withhold on all foreign passthru payments, this creates the potential for FFIs to use U.S. withholding agents as ''blockers'' for foreign passthru payments made to nonparticipating FFIs. The Treasury Department and the IRS are assessing various options to address this issue, including expanding the definition of withholdable payments, or requiring FFIs to perform withholding on foreign passthru payments made to U.S. withholding agents acting as intermediaries. Comments are requested regarding possible approaches to address this issue.

F. Gross Proceeds

Section 1.1473–1(a)(5)(vii) reserves on the issue of how a withholding agent that is a flow-through entity determines the amount of gross proceeds allocable to a partner, beneficiary, or owner in the entity for purposes of the withholding requirements of chapter 4. The Treasury Department and the IRS request additional comments regarding methods to determine the amount of gross proceeds in such cases that are administratively feasible and that do not inappropriately favor investment in U.S. assets through flow-through entities over direct investment with respect to the withholding requirements of chapter 4.

G. Grandfathered Obligations

Section 1.1471–2(b) provides an exemption from withholding for certain grandfathered obligations but does not include in the definition of a grandfathered obligation any interest in an entity that is treated as equity for U.S. tax purposes, regardless of whether such entity holds assets that give rise to grandfathered payments. The Treasury Department and the IRS request comments on whether it is appropriate to treat as grandfathered obligations certain equity interests in securitization vehicles that invest solely in debt and similar instruments if such vehicles will liquidate within a specified time frame given the types of investments they hold and the extent of their reinvestment in other assets, and, if so, the appropriate limitations on such treatment to prevent abuse.

Proposed Effective/Applicability Date

The proposed regulations generally are proposed to apply on the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. The requirements imposed by individual sections of these proposed regulations are proposed to take effect in accordance with the dates provided in those sections, as described in the preamble.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

The collection of information in these proposed regulations is contained, *inter alia,* in §§ 1.1471–2, 1.1471–3, 1.1471–4, 1.1472–1, and 1.1474–1. The IRS intends that these information collection requirements will be satisfied by persons complying with either revised chapter 3 reporting forms, new reporting forms based on final chapter 4 regulatory guidance, or the terms, conditions, and requirements of an FFI agreement that satisfies the requirements of a Model FFI Agreement to be issued in an IRS Revenue Procedure. As a result, for purposes of the Paperwork Reduction Act, the reporting burden associated with the collection of information in these proposed regulations will be reflected in the OMB Form 83–1, *Paperwork Reduction Act Submission,* associated with a new or revised form or the Model FFI Agreement.

It is hereby certified that the collection of information in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Although the Treasury Department and the IRS anticipate that a substantial number of domestic small entities will be affected by the collection of information in this notice of proposed rulemaking, both the Treasury

Department and the IRS believe that the economic impact to these entities resulting from this notice of proposed rulemaking's information collection requirements will not be significant.

The domestic small business entities that are subject to chapter 4 and this notice of proposed rulemaking are those domestic business entities that are payors of U.S. source FDAP income that are presently subject to the information collection and reporting rules under chapter 3. These domestic small business entities must be familiar with chapter 3's information collection and reporting rules and forms so as to determine a payee's U.S. withholding status and, based on that status, withhold and remit the proper amount of tax on payments of U.S. source FDAP income. Small domestic business entities that are payors of U.S. source FDAP income have developed and implemented internal reporting and information collection systems under which the business entity satisfies its chapter 3 payee identification, withholding, and tax remittance requirements.

The Treasury Department and the IRS intend to revise the present chapter 3 reporting forms, with the revised forms being used by a payor of U.S. source FDAP income to satisfy the payor's obligations under chapters 3 and 4. As a result, this notice of proposed rulemaking's information collection requirements build on reporting and information collection systems familiar to and currently used by payors of U.S. source FDAP income that are domestic small business entities, thereby reducing the burden imposed on domestic small business entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. The IRS invites the public to comment on this certification.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be available for public inspection and copying.

While taxpayers are not required to submit comments and recommendations in any particular format, it would facilitate their review if comments follow these guidelines: (1) No general summary of chapter 4's provisions or the contents of the FATCA Notices is required; (2) comments and recommendations should be ordered starting with comments requested in the preamble and then based on the order of the proposed regulations, including a reference to the regulations that pinpoints the narrowest relevant section, subsection, paragraph, or further subdivision applicable to the comment or recommendation; and (3) recommendations should be set off and numbered sequentially throughout the comment letter. It is hoped that these guidelines will ease the burden in producing comments and facilitate the assessment thereof.

A public hearing has been scheduled for May 15, 2012, beginning at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by April 30, 2012, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 1, 2012. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the regulations under sections 1471 through 1474 is John Sweeney, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated significantly in their development.

The principal author of § 301.1474–1 is Michael E. Hara, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1471–1 is also issued under 26 U.S.C. 1471.

Section 1.1471–2 is also issued under 26 U.S.C. 1471.

Section 1.1471–3 is also issued under 26 U.S.C. 1471.

Section 1.1471–4 is also issued under 26 U.S.C. 1471.

Section 1.1471–5 is also issued under 26 U.S.C. 1471.

Section 1.1471–6 is also issued under 26 U.S.C. 1471.

Section 1.1472–1 is also issued under 26 U.S.C. 1472.

Section 1.1473–1 is also issued under 26 U.S.C. 1473.

Section 1.1474–1 is also issued under 26 U.S.C. 1474.

Section 1.1474–2 is also issued under 26 U.S.C. 1474.

Section 1.1474–3 is also issued under 26 U.S.C. 1474.

Section 1.1474–4 is also issued under 26 U.S.C. 1474.

Section 1.1474–5 is also issued under 26 U.S.C. 1474.

Section 1.1474–6 is also issued under 26 U.S.C. 1474.

Section 1.1474–7 is also issued under 26 U.S.C. 1474.

Section 301.1474–1 is also issued under 26 U.S.C.1474 * * *

Par. 2. Section 1.1471–0 is added to read as follows.

§ 1.1471–0 Outline of regulation provisions for section 1471.

This section lists captions contained in §§ 1.1471–1 through 1.1471–4.

§ 1.1471–1 Scope of chapter 4 of the Internal Revenue Code provisions and definitions.

(a) Purpose and scope of chapter 4 of the Internal Revenue Code regulations.

(b) Definitions.

§ 1.1471–2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

§ 1.1471–3 Identification of payee.

(4) Special requirements for a territory institution withholding statement.
(5) Special requirements for an exempt beneficial owner withholding statement.
(C) Failure to provide allocation information.
(D) Special rules applicable to a withholding certificate of a QI that assumes primary withholding responsibility under chapter 3.
(E) Special rules applicable to a withholding certificate of a QI that does not assume primary withholding responsibility under chapter 3.
(F) Special rules applicable to a withholding certificate of a territory financial institution that agrees to be treated as a U.S. person for purposes of chapter 4 of the Internal Revenue Code.
(G) Special rules applicable to a withholding certificate of a territory financial institution that does not agree to be treated as a U.S. person for purposes of chapter 4 of the Internal Revenue Code.
(iv) Certificate for exempt status (Form W–8EXP).
(v) Certificate for effectively connected income (Form W–8ECI).
(4) Requirements for written statements.
(5) Requirements for documentary evidence.
(6) Applicable rules for withholding certificates, written statements, and documentary evidence.
(i) Who may sign the certificate or written statement.
(ii) Period of validity.
(A) Withholding certificates.
(B) Written statements.
(C) Documentary evidence.
(D) Change of circumstances.
(1) Defined.
(2) Obligation to notify withholding agent of a change in circumstances.
(3) Withholding agent's obligation with respect to a change in circumstances.
(iii) Record retention.
(iv) Electronic transmission of withholding certificate, written statement, and documentary evidence.
(v) Acceptable substitute withholding certificate.
(vi) Documentation to be furnished for each account unless exception applies.
(vii) Reliance on a prior version of a withholding certificate.
(7) Documentation received after the time of payment.
(d) Documentation requirements to establish payee's chapter 4 status.
(1) Identification of U.S. persons.
(2) Identification of foreign individuals.
(i) In general.
(ii) Transitional exceptions for payments made prior to January 1, 2017, with respect to preexisting obligations.
(iii) Exception for offshore obligations.
(3) Identification of participating FFIs.
(i) In general.
(ii) Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.
(4) Identification of nonparticipating FFIs.
(i) In general.
(ii) Special documentation rules for payments made to an exempt beneficial owner through a nonparticipating FFI.
(5) Identification of registered deemed-compliant FFIs.
(i) In general.
(ii) Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.
(6) Identification of certified deemed-compliant FFIs.
(i) Identification of nonregistering local banks.
(ii) Identification of retirement plans.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(iii) Identification of non-profit organizations.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(iv) Identification of FFIs with only low-value accounts.
(7) Identification of owner-documented FFIs.
(i) In general.
(ii) Auditor's letter substitute.
(iii) Documentation for owners of payee.
(iv) Content of FFI owner reporting requirement.
(v) Exception for preexisting obligations.
(8) Identification of exempt beneficial owners.
(i) Identification of foreign governments and governments of U.S. possessions.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(ii) Identification of international organizations.
(iii) Identification of foreign central banks of issue.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(iv) Identification of retirement funds.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(v) Identification of entities wholly owned by exempt beneficial owners.
(9) Identification of excepted FFIs.
(i) Identification of nonfinancial holding companies.
(A) In general.
(B) Exceptions for offshore obligations.
(ii) Identification of start-up companies.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting obligations.
(iii) Identification of certain nonfinancial entities in liquidation or bankruptcy.
(A) In general.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(iv) Identification of hedging/financing centers of nonfinancial groups.
(A) In general.
(B) Exception for offshore obligations.
(v) Identification of section 501(c) organizations.
(A) In general
(B) Reason to know.
(10) Identification of territory financial institutions.
(i) Identification of territory financial institutions that are beneficial owners.
(A) In general.
(B) Exception for preexisting offshore obligations.
(ii) Identification of territory financial institutions acting as intermediaries or that are flow-through entities.
(iii) Reason to know.
(11) Identification of NFFEs.
(i) Identification of NFFEs that are publicly traded corporations.
(A) Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(ii) Identification of NFFE affiliates.
(A) Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(iii) Identification of territory NFFEs.
(A) Exception for offshore obligations.
(B) Exception for preexisting offshore obligations of $1,000,000 or less.
(iv) Identification of active NFFEs.
(A) Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.
(B) Exception for offshore obligations.
(C) Exception for preexisting offshore obligations.
(v) Identification of excepted NFFEs described in § 1.1472–1(c)(1)(iv).
(vi) Identification of passive NFFEs.

§ 1.1471–4 FFI agreement.

§ 1.1471–5 Definitions applicable to section 1471.

Par. 3. Section 1.1471–1 is revised to read as follows:

§ 1.1471–1 Scope of chapter 4 of the Internal Revenue Code provisions and definitions.

(a) *Purpose and scope of chapter 4 of the Internal Revenue Code regulations.* Sections 1.1471–1 through 1.1474–7 provide rules for withholding when a withholding agent makes a payment to an FFI or NFFE and prescribes the requirements for and definitions relevant to those FFIs and NFFEs to which withholding will not apply. Section 1.1471–1 provides definitions for terms used in chapter 4 of the Internal Revenue Code. Section 1.1471–2 provides rules for withholding under section 1471(a) on payments to FFIs and provides rules for grandfathered obligations. Section 1.1471–3 provides rules for determining the payee and the documentation requirements to establish a payee's chapter 4 status. Section 1.1471–4 describes the requirements of the FFI agreement under section 1471(b) and the application of section 1471(b) and (c) to an expanded affiliated group of FFIs. Section 1.1471–5 defines terms relevant to section 1471 and to the FFI agreement and defines categories of FFIs that will be deemed to have met the requirements of section 1471(b) pursuant to section 1471(b)(2). Section 1.1471–6 defines classes of beneficial owners of payments that are exempt from withholding under chapter 4 of the Internal Revenue Code. Section 1.1472–1 provides rules for withholding when a withholding agent makes a payment to an NFFE. Section 1.1473–1 provides definitions of the statutory terms in section 1473. Section 1.1474–1 provides rules relating to a withholding agent's liability for

withheld tax, filing of income tax and information returns, and depositing of tax withheld. Section 1.1474–2 provides rules relating to adjustments for overwithholding and underwithholding of tax. Section 1.1474–3 provides the circumstances in which a credit is allowed to a beneficial owner for a withheld tax. Section 1.1474–4 provides that a chapter 4 withholding obligation need only be collected once. Section 1.1474–5 contains rules relating to credits and refunds of tax withheld. Section 1.1474–6 provides rules coordinating withholding under sections 1471 and 1472 with withholding provisions under other sections of the Code. Section 1.1474–7 provides the confidentiality requirement for information obtained to comply with the requirements of chapter 4 of the Internal Revenue Code. Any reference in the provisions of sections 1471 through 1474 to an amount that is stated in U.S. dollars includes the foreign currency equivalent of that amount. Except as otherwise provided, the provisions of sections 1471 through 1474 and the regulations thereunder apply only for purposes of chapter 4 of the Internal Revenue Code. See § 301.1474–1 for the requirements for reporting on magnetic media that apply to financial institutions making payments pursuant to chapter 4 of the Internal Revenue Code.

(b) *Definitions.* Except as otherwise provided in this paragraph (b), the following definitions apply for purposes of sections 1471 through 1474 and the regulations under those sections.

(1) *Account*—(i) *Account.* The term *account* means a financial account as defined in § 1.1471–5(b).

(ii) *Custodial account.* The term *custodial account* has the meaning set forth in § 1.1471–5(b)(3)(ii).

(iii) *Depository account.* The term *depository account* has the meaning set forth in § 1.1471–5(b)(3)(i).

(iv) *Dormant account.* The term *dormant account* has the meaning set forth in § 1.1471–4(d)(6)(ii).

(v) *U.S. account.* The term *U.S. account* or *United States account* has the meaning set forth in § 1.1471–5(a).

(2) *Account holder.* The term *account holder* means the person who holds an account, as determined under § 1.1471–5(a)(3).

(3) *AML due diligence.* The term *AML due diligence* means the customer due diligence procedures of a financial institution pursuant to the anti-money laundering or similar requirements to which a financial institution, or branch thereof, is subject. This includes identifying the customer (including the owners of the customer), understanding the nature and purpose of the account, and ongoing monitoring.

(4) *Annuity contract.* The term *annuity contract* means a contract that would be an annuity under section 72 (without regard to subsections (s) and (u) and section 817(h)).

(5) *Beneficial owner.* Except as provided in § 1.1472–1, the term *beneficial owner* has the meaning set forth in § 1.1441–1(c)(6).

(6) *Broker.* The term *broker* means any person, U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. A broker includes an obligor that regularly issues and retires its own debt obligations, a corporation that regularly redeems its own stock, and a clearing organization that effects sales of securities for its members. A broker does not include an international organization that redeems or retires an obligation of which it is the issuer, a stock transfer agent that records transfers of stock for a corporation if the nature of the activities of the agent is such that the agent ordinarily would not know the gross proceeds from sales, an escrow agent that effects no sales other than such transactions as are incidental to the purpose of escrow (such as sales to collect on collateral), or a corporation that issues and retires long-term debt on an irregular basis.

(7) *Chapter 3.* For purposes of chapter 4 of the Internal Revenue Code, any reference to chapter 3 means sections 1441 through 1464 and the regulations thereunder, but does not include sections 1445 and 1446 and the regulations thereunder, unless the context indicates otherwise.

(8) *Chapter 4 of the Internal Revenue Code.* The term *chapter 4 of the Internal Revenue Code* means sections 1471 through 1474 and the regulations thereunder.

(9) *Chapter 4 reportable amount.* The term *chapter 4 reportable amount* has the meaning set forth in § 1.1474–1(d)(2)(i).

(10) *Chapter 4 status.* The term *chapter 4 status* means, with respect to a person, the person's status as a U.S. person, a specified U.S. person, a foreign individual, a participating FFI, a deemed-compliant FFI, an exempt beneficial owner, a nonparticipating FFI, a territory financial institution, a QI branch of a U.S. financial institution, an excepted NFFE, or a passive NFFE.

(11) *Complex trust.* A *complex trust* is a trust that is not a simple trust or a grantor trust.

(12) *Customer master file.* A *customer master file* includes the primary files of a participating FFI or deemed-compliant FFI for maintaining account holder information, such as information used for contacting account holders and for satisfying AML due diligence.

(13) *Documentary evidence.* The term *documentary evidence* means documents, other than a withholding certificate or written statement, that a withholding agent is permitted to rely upon to determine the chapter 4 status of a payee, an account holder, or an exempt beneficial owner in accordance with § 1.1471–3(c)(5).

(14) *Documentation.* The term *documentation* means withholding certificates, written statements, documentary evidence, and other documents that may be relevant in determining the status of a person for the purpose of a reporting or withholding requirement under chapter 4 of the Internal Revenue Code, including any document containing a determination of the account holder's citizenship or residency for tax or AML due diligence purposes or an account holder's claim of citizenship or residency for tax or AML due diligence purposes.

(15) *EIN.* The term *EIN* means an employer identification number (also known as a Federal tax identification number) described in § 301.6109–1(a)(1)(i).

(16) *Electronically searchable information.* The term *electronically searchable information* means information that an FFI maintains in its tax reporting files, customer master files, or similar files, that is stored in the form of an electronic database against which standard queries in programming languages, such as Structured Query Language, may be used. Information, data, or files are not electronically searchable merely because they are stored in an image retrieval system (such as portable document format (.pdf) or scanned documents).

(17) *Entity.* The term *entity* means any person other than an individual.

(18) *Excepted FFI.* The term *excepted FFI* means an entity that is excluded from the definition of an FFI, pursuant to § 1.1471–5(e)(5), and is not subject to withholding under section 1472, pursuant to § 1.1472–1(c)(1)(vi).

(19) *Exempt beneficial owner.* The term *exempt beneficial owner* means any person described in § 1.1471–6(b) through (g).

(20) *Expanded affiliated group.* The term *expanded affiliated group* has the meaning set forth in § 1.1471–5(i)(2).

(21) *FATF.* The term *FATF* means the Financial Action Task Force, which is an inter-governmental body that develops and promotes international

policies to combat money laundering and terrorist financing.

(22) *FATF-compliant.* The term *FATF-compliant* means the relevant jurisdiction—

(i) Is not subject to a FATF call on its members and other jurisdictions to apply counter-measures to protect the international financial system from the on-going and substantial money laundering and terrorist financing (ML/TF) risks emanating from the jurisdiction;

(ii) Is not a jurisdiction with strategic AML/CFT deficiencies that has not made sufficient progress in addressing the deficiencies; and

(iii) Is not a jurisdiction with strategic AML/CFT deficiencies irrespective of whether the jurisdiction has agreed upon an action plan with the FATF.

(23) *FFI.* The term *FFI* or *foreign financial institution* has the meaning set forth in § 1.1471–5(d).

(i) *Deemed-compliant FFI.* The term *deemed-compliant FFI* means an FFI that is treated, pursuant to section 1471(b)(2) and § 1.1471–5(f), as meeting the requirements of section 1471(b).

(A) *Certified deemed-compliant FFI.* The term *certified deemed-compliant FFI* means an FFI described in § 1.1471–5(f)(2).

(B) *Registered deemed-compliant FFI.* The term *registered deemed-compliant FFI* means an FFI described in § 1.1471–5(f)(1).

(ii) *Limited branch.* The term *limited branch* has the meaning set forth in § 1.1471–4(e)(2)(iii).

(iii) *Limited FFI.* The term *limited FFI* has the meaning set forth in § 1.1471–4(e)(3)(ii).

(iv) *Nonparticipating FFI.* The term *nonparticipating FFI* means an FFI other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner.

(v) *Participating FFI.* The term *participating FFI* means an FFI with respect to which an FFI agreement is in full force and effect.

(24) *FFI agreement.* The term *FFI agreement* means an agreement that is described in § 1.1471–4(a). An FFI agreement includes a QI agreement, a withholding partnership agreement, and a withholding trust agreement, that is entered into by an FFI and that has an effective date or renewal date on or after July 1, 2013.

(25) *FFI–EIN.* The term *FFI–EIN* means an EIN issued to a participating FFI or registered deemed-compliant FFI, including an EIN issued to a participating FFI that is a QI, WP, or WT.

(26) *Financial account.* The term *financial account* has the meaning set forth in § 1.1471–5(b).

(27) *Financial institution.* The term *financial institution* has the meaning set forth in § 1.1471–5(e).

(28) *Flow-through entity.* The term *flow-through entity* means a partnership, simple trust, or grantor trust, as determined under U.S. tax principles.

(29) *Foreign entity.* The term *foreign entity* has the meaning set forth in § 1.1473–1(e).

(30) *Foreign passthru payment.* The term *foreign passthru payment* has the meaning set forth in § 1.1471–5(h)(2).

(31) *Grantor trust.* A *grantor trust* is a trust with respect to which one or more persons are treated as owners of all or a portion of the trust under sections 671 through 679. If only a portion of the trust is treated as owned by a person, that portion is a grantor trust with respect to that person.

(32) *Gross proceeds.* The term *gross proceeds* has the meaning set forth in § 1.1473–1(a)(3).

(33) *Insurance company.* The term *insurance company* means a company more than half of the business of which during the calendar year is issuing (or being obligated to make payments with respect to) insurance or annuity contracts or the reinsuring of such contracts.

(34) *Intermediary.* The term *intermediary* has the meaning set forth in § 1.1441–1(c)(13).

(i) *NQI.* The term *NQI* or *nonqualified intermediary* has the meaning set forth in § 1.1441–1(c)(14).

(ii) *QI.* The term *QI* or *qualified intermediary* has the meaning set forth in § 1.1441–1(e)(5)(ii).

(35) *Life insurance contract.* The term *life insurance contract* means a contract that satisfies section 7702 (without regard to subsections (b), (c), and (d) and sections 101(f) and 817(h)).

(36) *NFFE.* The term *NFFE* or *non-financial foreign entity* means a foreign entity that is not a financial institution, including a territory NFFE.

(i) *Active NFFE.* The term *active NFFE* has the meaning set forth in § 1.1472–1(c)(1)(v).

(ii) *Excepted NFFE.* The term *excepted NFFE* means an NFFE that is described in § 1.1472–1(c)(1) or (2).

(iii) *Passive NFFE.* The term *passive NFFE* means an NFFE other than an excepted NFFE.

(37) *NQI withholding statement.* The term *NQI withholding statement* means the statement described in § 1.1441–1(e)(3)(iv).

(38) *NWP.* The term *NWP* or *nonwithholding foreign partnership* means a foreign partnership that is not a withholding foreign partnership.

(39) *NWT.* The term *NWT* or *nonwithholding foreign trust* means a foreign trust as defined in section 7701(a)(31)(B) that is a simple trust or grantor trust and is not a withholding foreign trust.

(40) *Offshore obligation.* The term *offshore obligation* means any account, instrument, or contract maintained and executed at an office or branch of the withholding agent at any location outside of the United States or in any location in a possession of the United States. The term *payment with respect to an offshore obligation* means a payment made outside of the United States, within the meaning of § 1.6049–5(e), with respect to an offshore obligation.

(41) *Participating FFI group.* The term *participating FFI group* means an expanded affiliated group, within the meaning of § 1.1471–5(i)(2), that includes one or more participating FFIs.

(42) *Partnership.* The term *partnership* has the meaning set forth in § 301.7701–2(c)(1).

(43) *Passthru payment.* The term *passthru payment* has the meaning set forth in § 1.1471–5(h).

(44) *Payee.* The term *payee* has the meaning set forth in § 1.1471–3(a).

(i) *U.S. payee.* The term *U.S. payee* means any payee that is a U.S. person.

(ii) *Foreign payee.* The term *foreign payee* means any payee other than a U.S. payee.

(45) *Payor.* The term *payor* has the meaning set forth in §§ 31.3406(a)–2 and 1.6049–(a)(2) and generally includes a withholding agent.

(46) *Person.* The term *person* has the meaning set forth in section 7701(a)(1) and the regulations thereunder. The term *person* does not include a wholly owned entity that is disregarded for Federal tax purposes as an entity separate from its owner. Notwithstanding the previous sentence, the term *person* includes, with respect to a withholdable payment, a foreign branch of a U.S. person that furnishes an intermediary withholding certificate indicating that it is a QI.

(i) *U.S. person.* The term *U.S. person* or *United States person* means a person described in section 7701(a)(30), the United States government (including an agency or instrumentality thereof), a State (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof).

(ii) *Foreign person.* The term *foreign person* means any person other than a U.S. person and includes, with respect to a withholdable payment, a foreign branch of a U.S. person that furnishes

an intermediary withholding certificate indicating that it is a QI.

(47) *Possession of the United States.* The term *possession of the United States* means American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands.

(48) *Preexisting obligation.* The term *preexisting obligation* means any account, instrument, or contract maintained or executed by the withholding agent as of January 1, 2013. With respect to a participating FFI, the term *preexisting obligation* means any account, instrument, or contract maintained or executed by the FFI prior to the date that the participating FFI's FFI agreement becomes effective. With respect to a registered deemed-compliant FFI, a preexisting obligation means any account, instrument, or contract maintained or executed by the FFI prior to the earlier of the date that the FFI registers as a deemed-compliant FFI or the date the FFI implements its required account opening procedures.

(49) *Preexisting entity account.* A *preexisting entity account* is a financial account held by one or more entities that is a preexisting obligation.

(50) *Preexisting individual account.* A *preexisting individual account* is a financial account held by one or more individuals that is a preexisting obligation.

(51) *QI agreement.* The term *QI agreement* means the agreement described in § 1.1441–1(e)(5)(iii).

(52) *Recalcitrant account holder.* The term *recalcitrant account holder* has the meaning set forth in § 1.1471–5(g).

(53) *Relationship manager.* A *relationship manager* is an officer or other employee of an FFI who is assigned responsibility for specific account holders on an on-going basis (including as an officer or employee that is a member of an FFI's private banking department), advises account holders regarding their banking, investment, trust, fiduciary, estate planning, or philanthropic needs, and recommends, makes referrals to, or arranges for the provision of financial products, services, or other assistance by internal or external providers to meet those needs. Notwithstanding the previous sentence, a person is only a relationship manager with respect to an account that has a balance or value of more than $1,000,000, taking into account the aggregation rules described in § 1.1471–4(c)(3)(ii) and (c)(4)(iii).

(54) *Simple trust.* The term *simple trust* means a trust that meets the requirements of section 651(a)(1) and (2).

(55) *Specified U.S. person.* The term *specified U.S. person* or *specified United States person* has the meaning set forth in § 1.1473–1(c).

(56) *Standardized industry code.* The term *standardized industry code* means a code that is part of a coding system used by the withholding agent to classify account holders by business type for purposes other than U.S. tax purposes that was implemented by the withholding agent by the later of January 1, 2012, or six months after the date the withholding agent was formed or organized.

(57) *Substantial U.S. owner.* The term *substantial U.S. owner* or *substantial United States owner* has the meaning set forth in § 1.1473–1(b).

(58) *Territory entity.* The term *territory entity* means any entity that is incorporated or organized under the laws of any possession of the United States.

(59) *Territory financial institution.* The term *territory financial institution* means a financial institution that is incorporated or organized under the laws of any possession of the United States, not including a territory entity that is described in § 1.1471–5(e)(1)(iii) that is not described in § 1.1471–5(e)(1)(i), (ii) or (iv).

(60) *Territory NFFE.* The term *territory NFFE* means a territory entity that is not a financial institution, including a territory entity that is described in § 1.1471–5(e)(1)(iii) and not described in § 1.1471–5(e)(1)(i), (ii) or (iv).

(61) *TIN.* The term *TIN* means the tax identifying number assigned to a person under section 6109.

(62) *U.S. owned foreign entity.* The term *U.S. owned foreign entity* or *United States owned foreign entity* has the meaning set forth in § 1.1471–5(c).

(63) *U.S. financial institution.* The term *U.S. financial institution* means a financial institution that is a U.S. person.

(64) *U.S. payor.* The term *U.S. payor* means a U.S. payor or U.S. middleman as defined in § 1.6049–5(c)(5).

(65) *U.S. source FDAP income.* The term *U.S. source FDAP income* has the meaning set forth in § 1.1473–1(a)(2).

(66) *Withholdable payment.* The term *withholdable payment* has the meaning set forth in § 1.1473–1(a).

(67) *Withholding.* The term *withholding* means the deduction and withholding of tax at the applicable rate from a payment.

(68) *Withholding agent.* The term *withholding agent* has the meaning set forth in § 1.1473–1(d).

(69) *Withholding certificate.* The term *withholding certificate* means a Form W–8, a Form W–9, or any other certificate that under the Code or regulations certifies or establishes the chapter 4 status of a payee or beneficial owner.

(i) *Flow-through withholding certificate.* The term *flow-through withholding certificate* means a Form W–8IMY submitted by a foreign partnership, foreign simple trust, or foreign grantor trust.

(ii) *Intermediary withholding certificate.* The term *intermediary withholding certificate* means a Form W–8IMY submitted by an intermediary.

(70) *WP.* The term *WP* or *withholding foreign partnership* means a foreign partnership that has executed the agreement described in § 1.1441–5(c)(2)(ii).

(71) *WT.* The term *WT* or *withholding foreign trust* means a foreign grantor trust or foreign simple trust that has executed the agreement described in § 1.1441–5(e)(5)(v).

(c) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 4. Section 1.1471–2 is added to read as follows:

§ 1.1471–2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

(a) *Requirement to withhold on payments to FFIs*—(1) *General rule of withholding.* Under section 1471(a), notwithstanding any exemption from withholding under any other provision of the Code or regulations, a withholding agent must withhold 30 percent of any withholdable payment made after December 31, 2013, to a payee that is an FFI unless the withholding agent can reliably associate the payment with documentation upon which it is permitted to rely to treat the payment as exempt from withholding under paragraph (a)(4) of this section, or the payment is made under a grandfathered obligation that is described in paragraph (b) of this section or constitutes gross proceeds from the disposition of such an obligation. Withholding under this section applies without regard to whether the FFI payee receives a withholdable payment as a beneficial owner or as an intermediary. See paragraph (a)(2)(iv) of this section for a description of the withholding requirements imposed on territory financial institutions as withholding agents under chapter 4 of the Internal Revenue Code. In the case of a withholdable payment to an NFFE, a withholding agent is required to determine whether withholding applies under section 1472 and § 1.1472–1. Except as otherwise provided in the regulations under chapter 4 of the Internal Revenue Code, a withholding

obligation arises on the date that a payment is made, as determined under § 1.1473–1(a).

(2) *Special withholding rules*—(i) *Requirement to withhold on payments of U.S. source FDAP to participating FFIs that are NQIs, NWPs, or NWTs.* A withholding agent that, after December 31, 2013, makes a payment of U.S. source FDAP income to a participating FFI that is an NQI, NWP, or NWT will be required to withhold 30 percent of the payment unless that withholding can be reduced under this paragraph (a)(2)(i). A withholding agent will not be required to withhold on a payment, or portion of a payment, that it can reliably associate, in the manner described in § 1.1471–3(c)(2), with a valid intermediary or flow-through withholding certificate that meets the requirements of § 1.1471–3(d)(3) and an FFI withholding statement that meets the requirements of § 1.1471–3(c)(3)(iii)(B)(*1*) and (*2*) and that establishes the portion of the payment that is allocable to a class of payees for which no withholding is required under chapter 4 of the Internal Revenue Code. Further, a withholding agent is not required to withhold on a payment that it can reliably associate with documentation indicating that the payee is a U.S. branch of a participating FFI that elects to be treated as a U.S. person.

(ii) *Residual withholding responsibility of intermediaries and flow-through entities.* An intermediary or flow-through entity that receives a withholdable payment after December 31, 2013, will be required to withhold (if another withholding agent has not withheld the full amount required) and report such payment under chapter 4 of the Internal Revenue Code, except as otherwise provided in this paragraph (a)(2)(ii) or (a)(2)(iv) of this section. An NQI, NWP, or NWT will not be required to withhold or report with respect to a withholdable payment under chapter 4 (except to the extent such payment is required to be reported as made to a U.S. account pursuant to § 1.1471–4(d) and an FFI's FFI agreement) if it has provided a valid NQI withholding certificate or flow-through withholding certificate, it has provided all of the information required by § 1.1471–3(c)(3)(iii), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under § 1.1474–1(d). A QI's, WP's, or WT's obligation to withhold and report will be determined in accordance with its QI withholding agreement, WP agreement, or WT agreement.

(iii) *Withholding on certain payments to QIs*—(A) *QIs making an election under section 1471(b)(3).* If a participating FFI that is acting as a QI makes the election under section 1471(b)(3) (a section 1471(b)(3) election) to be withheld upon, a withholding agent is required to withhold under this paragraph (a)(2)(iii) with respect to any withholdable payment or portion of a withholdable payment made to the participating FFI after December 31, 2013, that is U.S. source FDAP income subject to withholding. The withholding agent must withhold 30 percent of the portion of such a withholdable payment that is allocable in the pooled information provided by the payee in the withholding statement described in § 1.1471–3(c)(iii)(B) and (E) to recalcitrant account holders and nonparticipating FFIs. If no such allocation information is provided, the withholding agent must presume that the entire portion of the withholdable payment that is U.S. source FDAP income is made to nonparticipating FFIs. A participating FFI that makes a section 1471(b)(3) election to be withheld upon with respect to a payment may not assume primary withholding responsibility under chapter 3 for that payment. Conversely, a participating FFI that is a QI and that does not make a section 1471(b)(3) election will be required to assume primary withholding responsibility under chapter 3. The section 1471(b)(3) election is available only with respect to a payment of U.S. source FDAP income and only in cases in which—

(*1*) The withholding agent is either a participating FFI or a U.S. withholding agent;

(*2*) The person who receives the payment acts as a QI with respect to the payment;

(*3*) The person who receives the payment provides the withholding agent with a valid intermediary withholding certificate with respect to the payment, at or before the time of the payment, on which it notifies the withholding agent that it has made the election under section 1471(b)(3) and certifies that it is not assuming primary withholding responsibility under chapter 3; and

(*4*) The person who receives the payment provides to the withholding agent the withholding statement described in § 1.1471–3(c)(3)(iii)(B).

(B) *Special rule for QIs that are not FFIs.* The withholding requirements described in paragraph (a)(iii)(A) of this section also apply to a withholding agent that makes a payment of U.S. source FDAP income subject to withholding to a foreign branch of a U.S. financial institution that is a QI that does not assume primary withholding responsibility with respect to the payment for chapter 3 purposes. For purposes of the previous sentence, the person who receives the payment must furnish the withholding statement described in § 1.1471–3(c)(iii)(B)(*2*) that indicates the portion of the payment that is attributable to payees that are subject to withholding under chapter 4 of the Internal Revenue Code.

(iv) *Withholding obligation of a territory financial institution.* A territory financial institution is a withholding agent with respect to a withholdable payment if it falls within the definition of a withholding agent under § 1.1473–1(d) with respect to such payment. A territory financial institution that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment has an obligation to withhold if it agrees to be treated as a U.S. person with respect to that payment for both chapter 4 of the Internal Revenue Code purposes and under § 1.1441–1(b)(2)(iv)(A). A territory financial institution that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment is not required to withhold under paragraph (a)(1) of this section, however, if it has provided the withholding agent that is a U.S. person or a participating FFI with all of the documentation described in § 1.1471–3(c)(3)(iii) (in which it has not agreed to be treated as a U.S. person with respect to the payment), and it does not know, or have reason to know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under § 1.1474–1(d).

(v) *Payments of gross proceeds.* A withholding agent must withhold as required under paragraph (a)(1) of this section in the case of a withholdable payment consisting of gross proceeds (as defined under § 1.1473–1(a)(3)). When multiple withholding agents that are brokers are involved in effecting a sale, each broker must determine whether it is required to withhold on its payment of gross proceeds by reference to the chapter 4 status of its payee, unless the payment is otherwise exempt from withholding. With respect to a ''delivery versus payment'' or ''cash on delivery'' transaction or other similar account or transaction, each broker that pays the gross proceeds is a withholding agent with respect to the payment.

(3) *Coordination of withholding under section 1471(a) and (b).* A participating FFI that complies with the withholding requirements of section 1471(b), as described in § 1.1471–4(b) and its FFI agreement, is deemed to satisfy its

withholding obligations under sections 1471(a) and 1472(a), and this section.

(4) *Payments for which no withholding is required.* A withholding agent that has determined the payee of a withholdable payment to be a foreign entity in accordance with the documentation requirements and other rules provided in § 1.1471–3 must determine whether the payment is exempt from withholding and whether any special withholding requirements apply with respect to the payment. Paragraphs (a)(4)(i) through (vi) of this section describe circumstances in which a withholdable payment is not subject to withholding.

(i) *Exception to withholding if the withholding agent lacks control, custody, or knowledge*—(A) *In general.* The exceptions to withholding described in § 1.1441–2(d), applicable when an unrelated withholding agent has no control over or custody of money or property owned by a payee or beneficial owner of a payment, or lacks knowledge of the facts giving rise to such payments, also apply for purposes of chapter 4 of the Internal Revenue Code.

(B) Example. A, an individual, owns stock in DC, a domestic corporation, through a custodian, Bank 1, that is a participating FFI. A also has a money market account at Bank 2, that is also a participating FFI. DC pays a dividend of $1,000 that is deposited in A's custodial account at Bank 1. A then directs Bank 1 to transfer that $1,000 to A's money market account at Bank 2. With respect to the payment of the dividend into A's custodial account with Bank 1, both DC and Bank 1 are withholding agents making a withholdable payment for which they have custody, control, and knowledge. See § 1.1473–1(a)(2)(vii)(B) and (d). Therefore, both DC and Bank 1 have an obligation to withhold on the payment unless they can reliably associate the payment with documentation sufficient to treat the respective payees as not subject to withholding under chapter 4 of the Internal Revenue Code. With respect to the wire transfer of $1,000 from A's account at Bank 1 to A's account at Bank 2, neither Bank 1 nor Bank 2 is required to withhold with respect to the transfer because neither bank has knowledge of the facts that gave rise to the payment. Even though Bank 1 is a custodian with respect to A's interest in DC and has knowledge regarding the $1,000 dividend paid to A, once Bank A credits the $1,000 dividend to A's account, the $1,000 becomes A's property. When A transfers the $1,000 to its account at Bank 2, this constitutes a separate payment about which Bank 1 has no knowledge regarding the type of payment made. Further, Bank 2 only has knowledge that it receives $1,000 to be credited to A's account but has no knowledge regarding the type of payment made. Accordingly, Bank 1 and Bank 2 have no withholding obligation with respect to the transfer from A's custodial account at Bank 1 to A's money market account at Bank 2.

(ii) *Transitional exception to withholding for certain payments made prior to January 1, 2015*—(A) *In general.* For any withholdable payment made prior to January 1, 2015, with respect to a preexisting obligation for which a withholding agent does not have documentation indicating the payee's status as a nonparticipating FFI, the withholding agent will not be required to withhold under this section and section 1471(a) unless the payee is a prima facie FFI.

(B) *Prima facie FFIs.* If the payee is a prima facie FFI, the withholding agent must treat the payee as a nonparticipating FFI beginning on January 1, 2014, until the date the withholding agent obtains documentation sufficient to establish a different chapter 4 status of the payee. A *prima facie FFI* means any payee if—

(*1*) The withholding agent has available as a part of its electronically searchable information a designation for the payee as a QI or NQI; or

(*2*) For an account maintained in the United States, the payee is presumed to be a foreign entity, or is documented as a foreign entity for purposes of chapter 3 or 61, and the withholding agent has recorded as part of its electronically searchable information a standardized industry code that indicates that the payee is a financial institution. The following North American Industry Classification System codes indicate that the payee is a financial institution:

(*i*) Commercial Banking (NAICS 522110)

(*ii*) Savings Institutions (NAICS 522120)

(*iii*) Credit Unions (NAICS 522130)

(*iv*) Other Depositary Credit Intermediation (NAICS 522190)

(*v*) Investment Banking and Securities Dealing (NAICS 523110)

(*vi*) Securities Brokerage (NAICS 523120)

(*vii*) Commodity Contracts Dealing (NAICS 523130)

(*viii*) Commodity Contracts Brokerage (NAICS 523140)

(*ix*) Miscellaneous Financial Investment Activities (NAICS 523999)

(*x*) Open-End Investment Funds (NAICS 525910)

(*3*) In addition, the following Standard Industrial Classification Codes indicate that the payee is a financial institution:

(*i*) Commercial Banks, NEC (SIC 6029)

(*ii*) Branches and Agencies of Foreign Banks (branches) (SIC 6081)

(*iii*) Foreign Trade and International Banking Institutions (SIC 6082)

(*iv*) Asset-Backed Securities (SIC 6189)

(*v*) Security & Commodity Brokers, Dealers, Exchanges & Services (SIC 6200)

(*vi*) Security Brokers, Dealers & Flotation Companies (SIC 6211)

(*vii*) Commodity Contracts Brokers & Dealers (SIC 6221)

(*viii*) Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-(*ix*) End Management Investment Offices (SIC 6726)

(iii) *Payments to a participating FFI.* Except to the extent provided in paragraph (a)(2)(i) or (iii) of this section, a withholding agent is not required to withhold under this section on a withholdable payment made to a payee that the withholding agent can treat as a participating FFI in accordance with § 1.1471–3(d)(3). For this purpose, a limited branch of a participating FFI is treated as a nonparticipating FFI.

(iv) *Payments to a deemed-compliant FFI.* A withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment to a payee that the withholding agent can treat as a deemed-compliant FFI in accordance with § 1.1471–3(d)(5) through (7).

(v) *Payments to an exempt beneficial owner.* A withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment to the extent that the withholding agent can reliably associate the payment with documentation to determine the portion of the payment that is allocable to an exempt beneficial owner in accordance with § 1.1471–3(d)(8). For example, a withholding agent is not required to withhold under this section on a withholdable payment made to a payee that is the beneficial owner of such payment and is an exempt beneficial owner, to a nonparticipating FFI to the extent that the nonparticipating FFI receives the payment as an intermediary on behalf of one or more of its account holders that are exempt beneficial owners, or to a flow-through entity to the extent that the flow-through entity receives the payment with respect to one or more of its partners, beneficiaries, or owners (as applicable) that are exempt beneficial owners. See § 1.1471–3(d)(4)(ii) for special rules for a withholding agent to determine the portion of a withholdable payment that is beneficially owned by an exempt beneficial owner in the case of a payment made to a nonparticipating FFI.

(vi) *Payments to a territory financial institution.* A withholding agent is not required to withhold under section 1471(a) and this section on a withholdable payment that the

withholding agent may treat as made to a territory financial institution that is the beneficial owner of the payment in accordance with § 1.1471–3(d)(10)(i). A withholding agent is also not required to withhold under this section on a withholdable payment that the withholding agent can treat, in accordance with § 1.1471–3(d)(10)(ii), as made to a territory financial institution payee that is a flow-through entity or that acts as an intermediary with respect to the payment and that agrees to be treated as a U.S. person for purposes of chapters 3 and 4 with respect to the payment. A territory financial institution's agreement to be treated as a U.S. person for purposes of this section must be evidenced by a withholding certificate described in § 1.1471–3(c)(3)(iii)(F) furnished by the territory financial institution to the withholding agent.

(b) *Grandfathered obligations*—(1) *Grandfathered treatment of outstanding obligations.* Notwithstanding §§ 1.1471–5(h) and 1.1473–1(a), a withholdable payment or passthru payment does include any payment made under a grandfathered obligation or any gross proceeds from the disposition of such an obligation.

(2) *Definitions.* The following definitions apply solely for purposes of this paragraph (b)—

(i) *Grandfathered obligation.* The term *grandfathered obligation* means any obligation outstanding on January 1, 2013.

(ii) *Obligation.* The term *obligation* means any legal agreement that produces or could produce a passthru payment. An obligation does not, however, include any legal agreement or instrument that is treated as equity for U.S. tax purposes or any legal agreement that lacks a stated expiration or term, such as a savings deposit or demand deposit. In addition, it does not include any brokerage agreement, custodial agreement, or other similar agreement to hold financial assets for the account of others and to make and receive payments of income and other amounts with respect to such assets. In addition, an obligation does not include a master agreement that merely sets forth general and standard terms and conditions that are intended to apply to a series of transactions between parties and that does not set forth all of the specific terms necessary to conclude a particular contract. An obligation for purposes of this paragraph (b)(2)(i) includes, for example—

(A) A debt instrument as defined in section 1275(a)(1) (for example, a bond, guaranteed investment certificate, or term deposit);

(B) A binding agreement to extend credit for a fixed term (for example, a line of credit or a revolving credit facility), provided that on the agreement's issue date the agreement fixes the material terms (including a stated maturity date) under which the credit will be provided;

(C) A life insurance contract payable upon the earlier of attaining a stated age or death;

(D) A term certain annuity contract; and

(E) A derivatives transaction entered into between counterparties under an ISDA Master Agreement and evidenced by a confirmation.

(iii) *Outstanding on January 1, 2013.* An obligation that constitutes indebtedness for U.S. tax purposes is outstanding on January 1, 2013, if it has an issue date before January 1, 2013. In all other cases, an obligation is outstanding on January 1, 2013, if a legally binding agreement establishing the obligation was executed between the parties to the agreement before January 1, 2013. Any material modification of an outstanding obligation will result in the obligation being treated as newly issued or executed as of the effective date of such modification.

(iv) *Material modification.* In the case of an obligation that constitutes indebtedness for U.S. tax purposes, a material modification is any significant modification of the debt instrument as defined in § 1.1001–3. In all other cases, whether a modification of an obligation is material will be determined based upon all relevant facts and circumstances.

(3) *Application to flow-through entities*—(i) *Partnerships.* A payment made under a grandfathered obligation includes a payment made to a partnership with respect to such obligation, including a payment made with respect to a partnership's disposition of such obligation. A payment made under a grandfathered obligation further includes the income from such obligation that is includible in the gross income of a partner with respect to a capital or profits interest in the partnership and the gross proceeds allocated to a partner from the disposition of such obligation as determined under § 1.1473–1(a)(5)(vi).

(ii) *Simple trusts.* A payment made under a grandfathered obligation includes a payment made to a simple trust with respect to such obligation, including a payment made with respect to a simple trust's disposition of such obligation. A payment made under a grandfathered obligation further includes income from such obligation that is includible in the income of a beneficiary and further includes a beneficiary's share of the gross proceeds from a disposition of such obligation as determined under § 1.1473–1(a)(5)(vii).

(iii) *Grantor trusts.* A payment made under a grandfathered obligation includes a payment made to a grantor trust with respect to such obligation, including a payment made with respect to the trust's disposition of such obligation. A payment made under a grandfathered obligation further includes income from such obligation that is includible in the gross income of a person that is treated as an owner of the trust and the gross proceeds from the disposition of such obligation to the extent such owner is treated as owning the portion of the trust that consists of the obligation.

(c) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 5. Section 1.1471–3 is added to read as follows.

§ 1.1471–3 Identification of payee.

(a) *Payee defined*—(1) *In general.* Except as otherwise provided in this paragraph (a), for purposes of chapter 4 of the Internal Revenue Code a payee is the person to whom a payment is made, regardless of whether such person is the beneficial owner of the amount.

(2) *Payee with respect to a financial account.* For purposes of payments made to a financial account and except as otherwise provided in paragraph (a)(3) of this section, the payee is the holder of the financial account.

(3) *Exceptions*—(i) *Certain foreign agents or intermediaries*—(A) A foreign person that the withholding agent may treat as acting as an agent or intermediary with respect to a payment in accordance with paragraph (b)(1) of this section is not the payee if it is—

(*1*) An NFFE; or

(*2*) In the case of a payment of U.S. source FDAP income, a participating FFI acting as an intermediary, other than a QI that has assumed primary withholding responsibility;

(B) In the case of an agent or intermediary described in paragraph (a)(3)(i)(A) of this section, the payee is the person or persons for whom the agent or intermediary collects the payment. Thus, for example, the payee of a payment of U.S. source FDAP income that the withholding agent can reliably associate with a withholding certificate from a qualified intermediary that does not assume primary withholding responsibility with respect to the payment under chapter 3, or a payment to a participating FFI that is an NQI, is the person or persons for whom the QI or NQI acts.

(ii) *Foreign flow-through entity.* (A) A foreign entity that a withholding agent may treat as a flow-through entity is not a payee with respect to a payment unless the flow-through entity is—

(*1*) An FFI, other than a participating FFI receiving a payment of U.S. source FDAP;

(*2*) An active NFFE or excepted FFI that is not acting as an agent or intermediary with respect to the payment;

(*3*) A WP or WT that is not acting as an agent or intermediary with respect to the payment; or

(*4*) Receiving income that is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States, or receiving a payment of gross proceeds from the sale of property that can produce income that is excluded from the definition of a withholdable payment under § 1.1473–1(a)(4).

(B) A withholding agent that makes a withholdable payment to a flow-through entity that is not described in paragraphs (a)(3)(ii)(A)(*1*) through (*3*) of this section will be required to treat the partner, beneficiary, or owner (as applicable) as the payee (looking through partners, beneficiaries, and owners that are themselves flow-through entities that are not described in paragraphs (a)(3)(ii)(A)(*1*) through (*3*)).

(iii) *U.S. intermediary or agent of a foreign person.* A withholding agent that makes a withholdable payment to a U.S. person and has actual knowledge that the person receiving the payment is acting as an intermediary or agent of a foreign person with respect to the payment must treat such foreign person, and not the intermediary or agent, as the payee of such payment. Notwithstanding the previous sentence, a withholding agent that makes a withholdable payment to a U.S. financial institution that is acting as an intermediary or agent with respect to the payment on behalf of one or more foreign persons may treat the U.S. financial institution as the payee if the withholding agent has no reason to know that the U.S. financial institution will not comply with its obligation to withhold under sections 1471 and 1472.

(iv) *Territory financial institution.* A withholding agent that makes a withholdable payment to a territory financial institution that is a flow-through entity or is acting as an intermediary or agent with respect to the payment may treat the territory financial institution as the payee only if the territory financial institution has agreed (as evidenced by a withholding certificate described in § 1.1471–3(c)(3)(iii)(F)) to be treated as a U.S. person for purposes of withholding with respect to the payment for both chapter 3 and chapter 4 of the Internal Revenue Code purposes. In all other cases, the withholding agent must treat as the payee the partner, beneficiary, or owner (as applicable) of the territory financial institution that is a flow-through entity or the person on whose behalf the territory financial institution is acting.

(v) *Disregarded entity or branch.* Except as otherwise provided in this paragraph (a)(3)(v), a withholding agent that makes a withholdable payment to an entity that is disregarded for U.S. Federal tax purposes under § 301.7701–2(c)(2) as an entity separate from its single owner must treat the single owner as the payee. Notwithstanding the previous sentence, a withholding agent that makes a payment to a limited branch will be required to treat the payment as made to a nonparticipating FFI.

(vi) *U.S. branch of certain foreign banks or foreign insurance companies.* A withholdable payment to a U.S. branch of a participating FFI is a payment to a U.S. person if the U.S. branch and the withholding agent have agreed to treat the U.S. branch as a U.S. person for purposes of § 1.1441–1(b)(2)(iv). However, a U.S. branch that is treated as a U.S. person under § 1.1441–1(b)(2)(iv) is not treated as a U.S. person for purposes of the withholding certificate it may provide to a withholding agent for purposes of chapter 4 of the Internal Revenue Code. Accordingly, a U.S. branch of a participating FFI must furnish a withholding certificate on a Form W–8 to certify its chapter 4 status (and not a Form W–9). A U.S. branch of a participating FFI that is treated as a U.S. person for purposes of chapter 3 may not make an election to be withheld upon, as described in section 1471(b)(3) of the Code and § 1.1471–2(a)(2)(iii), for purposes of chapter 4. See § 1.1471–4(d) for rules requiring a U.S. branch of a participating FFI to report as a U.S. person.

(vii) *Foreign branch of a U.S. financial institution.* A payment to a foreign branch of a U.S. person is a payment to a U.S. payee. However, a payment to a foreign branch of a U.S. financial institution will be treated as a payment to a foreign payee if the foreign branch is a QI. Therefore, a foreign branch that is a QI will provide the withholding agent with an intermediary withholding certificate and the withholding agent will report the payment as made to foreign branch of the QI on a Form 1042–S.

(b) *Determination of payee's status.* Except as otherwise provided in this paragraph (b), a withholding agent must base its determination of the chapter 4 status of a payee on documentation that the withholding agent can reliably associate with such payment. Paragraph (c) of this section provides rules for when a withholding agent can reliably associate a payment with appropriate documentation. Paragraph (d) of this section provides documentation requirements applicable to each class of payees, including exceptions for payments made with respect to offshore obligations or preexisting obligations. Paragraph (e) provides standards for determining when a withholding agent will be considered to have reason to know that a claim of exemption from withholding is unreliable or incorrect. Paragraph (f) of this section provides presumptions that apply for purposes of determining a payee's chapter 4 status in the absence of documentation or when the documentation provided is unreliable or incorrect.

(1) *Determining whether a payment is received by an intermediary.* A withholding agent may treat the person who receives a payment as an intermediary if it can reliably associate the payment with a valid intermediary withholding certificate on which the person who receives the payment claims to be a QI or NQI. For this purpose, a U.S. person's foreign branch that is a QI is treated as a foreign intermediary. A withholding agent that makes a payment with respect to an offshore obligation may also treat the person who receives a payment as an intermediary if the withholding agent can reliably associate the payment with documentation that would be sufficient to treat the person as an excepted FFI under paragraph (d)(9) of this section or otherwise as an NFFE under paragraph (d)(11) of this section if the person were the payee, and the person has provided written notification, whether or not such notification is signed, that it accepts the payment on behalf of another person or persons. A withholding agent may rely on the type of certificate furnished as determinative of whether the person who receives the payment is an intermediary, unless the withholding agent knows or has reason to know that the certificate is incorrect. For example, a withholding agent that receives a beneficial owner withholding certificate from an FFI may treat the FFI as the beneficial owner unless it has information in its records that would indicate otherwise or the certificate contains information that is not consistent with beneficial owner status

(for example, sub-account numbers or additional names). If the FFI also acts as an intermediary, the withholding agent may request that the FFI furnish two certificates, that is, a beneficial owner certificate for the amounts it receives as a beneficial owner, and an intermediary withholding certificate for the amounts it receives as an intermediary. A withholding agent that cannot reliably associate a payment with documentation sufficient to treat the person who receives the payment as an intermediary must follow the presumption rules set forth in paragraph (f)(5) of this section to determine whether it must treat the person who receives the payment as an intermediary.

(2) *Determination of entity type.* A withholding agent may rely upon a person's entity classification contained in a valid Form W–8 or Form W–9 if the withholding agent has no reason to know that the entity classification is incorrect. A withholding agent that makes a payment with respect to an offshore obligation may also rely upon a written notification provided by the person who receives the payment, regardless of whether such notification is signed, that indicates the person's entity classification unless the withholding agent has reason to know that the entity classification indicated by the person who receives the payment is incorrect. A withholding agent may not rely on a person's claim of classification other than as a corporation if the person's name indicates that the person is a per se corporation described in § 301.7701–2(b)(8) of this chapter unless the certificate or written statement contains a statement that the person is a grandfathered per se corporation described in § 301.7701–2(b)(8) of this chapter and that its grandfathered status has not been terminated.

(3) *Determination of whether the payment is made to a QI, WP, or WT.* A withholding agent may treat the person who receives a payment as a QI, a WP, or a WT if the withholding agent can reliably associate the payment with a valid Form W–8IMY, as described in paragraph (c)(3)(iii) of this section, that indicates that the person who receives the payment is a QI, WP, or WT, and the form contains the person's FFI–EIN, in the case of a QI or a WP or WT that is an FFI, or in the case of a QI, WP, or WT that is not an FFI its QI–EIN, WP–EIN, or WT–EIN.

(4) *Determination of whether the payee is receiving effectively connected income.* A withholding agent may treat a payment as made to a payee that is receiving income that is effectively connected to a trade or business in the United States if it can reliably associate the payment with a valid Form W–8ECI described in paragraph (c)(3)(iv) of this section.

(c) *Rules for reliably associating a payment with a withholding certificate or other appropriate documentation*—(1) *In general.* A withholding agent can reliably associate a withholdable payment with valid documentation if, prior to the payment, it holds valid documentation appropriate to the payee's chapter 4 status as described in paragraph (d) of this section (either directly or through an agent), it can reliably determine how much of the payment relates to the valid documentation, and it does not know or have reason to know that any of the information, certifications, or statements in, or associated with, the documentation are unreliable or incorrect. Thus, a withholding agent cannot reliably associate a withholdable payment with valid documentation provided by a payee to the extent such documentation is unreliable or incorrect with respect to the claims made, or to the extent that information required to allocate all or a portion of the payment to each payee is unreliable or incorrect. A withholding agent may rely on information and certifications contained in withholding certificates or other documentation without having to inquire into the truthfulness of the information or certifications, unless it knows or has reason to know that the information or certifications are untrue.

(2) *Reliably associating a payment with documentation when a payment is made through an intermediary or flow-through entity that is not the payee*—(i) A withholding agent that makes a payment to a foreign intermediary or foreign flow-through entity that is not the payee under paragraph (a) of this section can reliably associate the payment with valid documentation only if, in addition to the documentation described in paragraph (d) of this section that is relevant to the payee, the withholding agent also has obtained a valid Form W–8IMY, described in paragraph (c)(3)(iii) of this section from the intermediary or flow-through entity (and, with respect to a payment made through a chain of intermediaries or flow-through entities, has received a Form W–8IMY from any other intermediary or flow-through entity in that chain).

(ii) Notwithstanding paragraph (c)(2)(i) of this section, a withholding agent that makes a payment with respect to an offshore obligation to an intermediary or flow-through entity that is an NFFE, may rely upon a written notification from the intermediary or flow-through entity, regardless of whether such notification is signed, stating that the NFFE is a flow-through entity or is acting as an intermediary with respect to the payment, in lieu of the Form W–8 described in the previous sentence. However, in such case, the NFFE intermediary or flow-through entity will be required to provide the withholding statement that generally accompanies the Form W–8IMY, designating the payees and the appropriate amount that should be allocated to each payee. If no such withholding statement is provided, the payment will be treated as made to a nonparticipating FFI.

(3) *Requirements for validity of certificates*—(i) *Form W–9.* A valid Form W–9, or a substitute form, must meet the requirements prescribed in § 31.3406(h)–3, including the requirement that the form contain the payee's name and TIN, and be signed and dated under penalties of perjury by the payee or a person authorized to sign for the payee pursuant to sections 6061 through 6063 and the regulations thereunder. A foreign person, including a U.S. branch of a foreign person that is treated as a U.S. person under § 1.1441–1(b)(2)(iv), or a foreign branch of a U.S. financial institution that is a QI, may not provide a Form W–9.

(ii) *Beneficial owner withholding certificate (Form W–8BEN)*—(A) A beneficial owner withholding certificate includes a Form W–8BEN (or a substitute form) and such other form as the IRS may prescribe. A beneficial owner withholding certificate is valid only if its validity period has not expired, it is signed under penalties of perjury by a person with authority to sign for the person whose name is on the form, and it contains—

(*1*) The person's name, permanent residence address, and TIN (if required);

(*2*) The country under the laws of which the person is created, incorporated, or governed (if a person other than an individual);

(*3*) The entity classification of the person;

(*4*) The chapter 4 status of the person; and

(*5*) Such other information as may be required by the regulations under section 1471 or 1472 or by the form or the accompanying instructions in addition to, or in lieu of, the information described in this paragraph (c)(3)(ii).

(B) For purposes of chapter 4 of the Internal Revenue Code, a person's permanent residence address is the address in the country where the person claims to be a resident for purposes of

that country's income tax. The address of a financial institution with which the person maintains an account, a post office box, or an address used solely for mailing purposes is not a residence address for this purpose unless such address is the only permanent address used by the person and appears as the person's registered address in the person's organizational documents. If the person is an individual who does not have a tax residence in any country, the permanent address is the place at which the person normally resides. If the person is an entity and does not have a tax residence in any country, then the permanent residence address is the place at which the person maintains its principal office. See paragraph (d) of this section for additional form requirements applicable to each type of chapter 4 status.

(iii) *Withholding certificate of an intermediary, flow-through entity, or U.S. branch (Form W–8IMY)*—(A) *In general.* A withholding certificate of an intermediary, flow-through entity, or U.S. branch is valid for purposes of chapter 4 of the Internal Revenue Code only if it is furnished on a Form W–8IMY, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person with authority to sign for the person named on the form, its validity period has not expired, and it contains the following information, statements, and certifications—

(*1*) The name and permanent residence address of the person;

(*2*) The country under the laws of which the person is created, incorporated, or governed;

(*3*) The person's chapter 4 status;

(*4*) The person's entity tax classification;

(*5*) An FFI–EIN, in the case of a participating FFI or a registered deemed-compliant FFI, or an EIN in the case of a QI, WP, or WT that is not an FFI;

(*6*) In the case of an intermediary certificate, a certification that, with respect to accounts listed on the withholding statement, the intermediary is not acting for its own account;

(*7*) With respect to a withholding certificate of a QI, a certification that it is acting as a QI with respect to the accounts listed on the withholding statement;

(*8*) In the case of a participating FFI that is an NQI, an NWP, an NWT, a QI that makes a section 1471(b)(3) election to be withheld upon for purposes of chapter 4 of the Internal Revenue Code, or a QI that is a foreign branch of a U.S. financial institution, an FFI withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(*1*) and (*2*) of this section;

(*9*) In the case of an NFFE that is an NQI, an NWP, or an NWT, an NFFE withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(*1*) and (*3*) of this section; and

(*10*) Any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph.

(B) *Withholding statement*—(*1*) *In general.* A withholding statement forms an integral part of the withholding certificate and the penalties of perjury statement provided on the withholding certificate apply to the withholding statement as well. The withholding statement may be provided in any manner, and in any form, to which the FFI, NFFE, or QI submitting the form and the withholding agent mutually agree, including electronically. If the withholding statement is provided electronically, there must be sufficient safeguards to ensure that the information received by the withholding agent is the information sent by the FFI, NFFE, or QI submitting the withholding certificate and must also document all occasions of user access that result in the submission or modification of withholding statement information. In addition, the electronic system must be capable of providing a hard copy of all withholding statements provided by the FFI, NFFE, or QI. The withholding statement must be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapter 4 of the Internal Revenue Code. A withholding agent will be liable for tax, interest, and penalties in accordance with § 1.1474–1 to the extent it does not follow the presumption rules of paragraph (f) of this section for any payment, or portion thereof, for which a withholding statement is required and the withholding agent does not have a valid withholding statement prior to making a payment.

(*2*) *Special requirements for an FFI withholding statement.* An FFI withholding statement must include either pooled information that indicates the portion of the payment attributable to recalcitrant account holders and nonparticipating FFIs (or, in the case of a QI that is a foreign branch of a U.S. financial institution, the portion of the payment allocable to account holders subject to chapter 4 withholding) and the portion of the payment that is allocated to each class of payees that is not subject to withholding under chapter 4, or an allocation of the payment to each payee, and any other information reasonably necessary to enable the withholding agent to report the payment in accordance with the requirements described in § 1.1474–1(d) and the requirements of Form 1042–S and the accompanying instructions. A withholding agent may rely upon a withholding statement provided by the FFI for purposes of chapter 3 provided that the withholding statement includes all of the information required by paragraph (c)(3)(iii)(B) of this section and specifies the portion of the payment that must be withheld under each of chapters 3 and 4.

(*3*) *Special requirements for an NFFE withholding statement.* An NFFE withholding statement must contain the name, address, TIN (if any), entity type, and chapter 4 status of each payee, the amount allocated to each payee, a valid withholding certificate or other appropriate documentation sufficient to establish the chapter 4 status of each payee in accordance with paragraph (d) of this section, and any other information reasonably necessary to enable the withholding agent to report the payment in accordance with the requirements described in § 1.1474–1(d) and the requirements of Form 1042–S and the accompanying instructions. Notwithstanding the prior sentence, an NFFE is permitted to provide pooled allocation information with respect to payees that are treated as nonparticipating FFIs. A withholding agent may rely upon a withholding statement provided by the NFFE for purposes of chapter 3 provided that the withholding statement includes all of the information required by paragraph (c)(3)(iii)(B) of this section and specifies the portion of the payment that must be withheld under each of chapters 3 and 4.

(*4*) *Special requirements for a territory institution withholding statement.* A territory institution withholding statement must include the name, address, TIN (if any), entity type, and chapter 4 status of each payee on behalf of which it is receiving the payment, the amount allocated to each payee, a valid withholding certificate or other documentation sufficient to establish the chapter 4 status of each payee in accordance with paragraph (d) of this section, and any other information reasonably necessary to enable the withholding agent to report the payment in accordance with the requirements for the Forms 1042 and 1042–S, described in § 1.1474–1(d), and the instructions accompanying the forms. A withholding agent may rely upon a withholding statement provided by the territory

financial institution for purposes of chapter 3 provided that the withholding statement includes all of the information required by paragraph (c)(3)(iii)(B) of this section and specifies the portion of the payment that must be withheld under each of chapters 3 and 4.

(*5*) *Special requirements for an exempt beneficial owner withholding statement.* An exempt beneficial owner withholding statement must include the name, address, TIN (if any), entity type, and chapter 4 status of each exempt beneficial owner on behalf of which the nonparticipating FFI is receiving the payment, the amount allocable to each exempt beneficial owner, a valid withholding certificate or other documentation sufficient to establish the chapter 4 status of each exempt beneficial owner in accordance with paragraph (d) of this section, and any other information reasonably necessary to enable the withholding agent to report the payment in accordance with the requirements described in § 1.1474–1(d) and the requirements of Form 1042–S and the accompanying instructions. The withholding statement must allocate the remainder of the payment that is not allocated to an exempt beneficial owner to the nonparticipating FFI receiving the payment.

(C) *Failure to provide allocation information.* A withholding certificate provided by an NWP, NWT, or NQI that fails to provide documentation or allocation information with respect to some of the partners of the partnership, owners or beneficiaries of the trust, or persons for whom the intermediary is acting will not be treated as invalid with respect to the persons for whom documentation and allocation information is properly provided. The portion of the payment that is not reliably associated with underlying documentation or that is not properly allocated will be allocated in accordance with the presumption rules set forth in paragraph (f) of this section. For example, assume a withholding certificate that is provided by an FFI that is an NQI includes an FFI withholding statement that indicates that 50 percent of the payment is allocable to a pool of payees that are exempt for purposes of chapter 4 of the Internal Revenue Code but does not allocate the remaining 50 percent of the payment. In such a case, the withholding agent may treat 50 percent of the payment as exempt from chapter 4 and the remaining 50 percent that was not allocated will be treated, under the presumption rules set forth in paragraph (f) of this section, as made to a pool of payees that are nonparticipating FFIs.

(D) *Special rules applicable to a withholding certificate of a QI that assumes primary withholding responsibility under chapter 3 of the Internal Revenue Code.* A QI that assumes primary withholding responsibility under chapter 3 of the Internal Revenue Code for a payment may not make the election described in § 1.1471–2(a)(2)(iii) to be withheld upon with respect to the payment. Thus, where a QI assumes primary withholding responsibility under chapter 3 with respect to a payment, in addition to the other requirements indicated in paragraph (c)(3)(iii)(A) of this section, a withholding agent can reliably associate the payment with a valid withholding certificate only when the QI has not indicated that it makes the section 1471(b)(3) of the Code election to be withheld upon for purposes of chapter 4 of the Internal Revenue Code.

(E) *Special rules applicable to a withholding certificate of a QI that does not assume primary withholding responsibility under chapter 3.* A QI that does not assume primary withholding responsibility under chapter 3 will be required to make the section 1471(b)(3) election to be withheld upon that is described in § 1.1471–2(a)(2)(iii). Thus, in a case in which a QI does not assume primary withholding responsibility under chapter 3, a withholding agent can reliably associate the payment with a valid withholding certificate only when, in addition to the other information required by paragraph (c)(3)(iii)(A) of this section, the withholding certificate indicates that the QI elects to be withheld upon for purposes of chapter 4 of the Internal Revenue Code.

(F) *Special rules applicable to a withholding certificate of a territory financial institution that agrees to be treated as a U.S. person for purposes of chapter 4 of the Internal Revenue Code.* A withholding agent may reliably associate a payment with an intermediary withholding certificate or flow-through withholding certificate of a territory financial institution that agrees to be treated as a U.S. person if, in addition to the other information required by paragraph (c)(2)(iii)(A) of this section, the certificate contains an EIN of the territory financial institution and a certification that the territory financial institution agrees to be treated as a U.S. person with respect to the payment for both chapter 3 and chapter 4 of the Internal Revenue Code purposes.

(G) *Special rules applicable to a withholding certificate of a territory financial institution that does not agree to be treated as a U.S. person for purposes of chapter 4 of the Internal Revenue Code.* A withholding agent may reliably associate a payment with an intermediary withholding certificate or a flow-through withholding certificate of a territory financial institution that does not agree to be treated as a U.S. person if, in addition to the information required by paragraph (c)(3)(iii)(A) of this section, the certificate indicates that the institution has not agreed to be treated as a U.S. person and the institution provides a territory institution withholding statement described in paragraphs (c)(3)(iii)(B)(*1*) and (*4*) of this section. If the territory financial institution does not provide valid documentation with respect to all payees on behalf of which it receives the payment, the withholding agent may still treat the withholding certificate and any other documentation received as valid but must treat any portion of the payment allocable to undocumented payees of the territory financial institution as made to a nonparticipating FFI.

(iv) *Certificate for exempt status (Form W–8EXP).* A Form W–8EXP is valid only if it contains the name, address, and chapter 4 status of the payee, the relevant certifications or documentation, and any other requirements indicated in the instructions to the form, and is signed under penalties of perjury by a person with authority to sign for the payee.

(v) *Certificate for effectively connected income (Form W–8ECI).* A Form W–8ECI is valid only if, in addition to meeting the requirements in the instructions to the form, it contains the TIN of the payee, represents that the amounts for which the certificate is furnished are effectively connected with the conduct of a trade or business in the United States and are includable in the payee's gross income for the taxable year, and is signed under penalties of perjury by a person with authority to sign for the payee.

(4) *Requirements for written statements.* A written statement provided by a payee with respect to an offshore obligation must contain a payee's certification that it meets the requirements relevant to the chapter 4 status claimed and must be signed by the payee under penalties of perjury. A written statement may be used in lieu of a withholding certificate only to the extent provided under this section and only when accompanied by

documentary evidence (unless provided otherwise by this section).

(5) *Requirements for documentary evidence.* Documentary evidence with respect to a payee is only reliable if it contains sufficient information to support the payee's claim of chapter 4 status. Acceptable documentary evidence includes—

(i) A certificate of residence issued by an appropriate tax official of the country in which the payee claims to be a resident that indicates that the payee has filed its most recent income tax return as a resident of that country;

(ii) With respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and address and is typically used for identification purposes;

(iii) With respect to an entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the entity and either the address of its principal office in the country (or possession of the United States) in which it claims to be a resident or the country (or possession of the United States) in which the entity was incorporated or organized;

(iv) With respect to an account maintained in a jurisdiction with anti-money laundering rules that have been approved by the IRS in connection with a QI agreement (as referenced in § 1.1441–1(e)(5)(iii)), any of the documents other than a Form W–8 or W–9 referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or entities; and

(v) Any financial statement, third-party credit report, bankruptcy filing, SEC report, or other document identified in the specific payee documentation requirements in paragraph (d) of this section.

(6) *Applicable rules for withholding certificates, written statements, and documentary evidence.* The provisions in this paragraph (c)(6) describe standards generally applicable to withholding certificates on Form W–8 (or a substitute form), written statements, and documentary evidence furnished to establish the payee's chapter 4 status. These provisions do not apply to Forms W–9 (or their substitutes). For corresponding provisions regarding the Form W–9 (or a substitute Form W–9), see section 3406 and the regulations thereunder.

(i) *Who may sign the certificate or written statement.* A withholding certificate (including an acceptable substitute) or written statement may be signed by any person authorized to sign a declaration under penalties of perjury on behalf of the person whose name is on the certificate or written statement, as provided in sections 6061 through 6063 and the regulations thereunder.

(ii) *Period of validity*—(A) *Withholding certificates.* For purposes of determining the period of validity for a withholding certificate under chapter 4 of the Internal Revenue Code, the rules prescribed in § 1.1441–1(e)(4)(ii)(A) through (C) apply, except that § 1.1441–1(e)(4)(ii)(B)(*1*) will not apply to a withholding certificate of a nonregistering local bank, an FFI with only low-value accounts, or an owner-documented FFI.

(B) *Written statements.* Except as otherwise provided, a written statement is valid until the earlier of the last day of the third calendar year following the year in which documentary evidence is provided to the withholding agent or the day on which a change in circumstance occurs that makes the information contained in the written statement incorrect. However, a written statement submitted by a foreign government or a foreign central bank will remain valid indefinitely, unless and until a change in circumstances makes the information contained in the written statement incorrect.

(C) *Documentary evidence.* As a general rule, documentary evidence is valid until the earlier of the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent or the day on which a change in circumstance occurs that makes the information on the documentary evidence incorrect. However, documentary evidence that contains an expiration date will be valid until the end of the expiration period, regardless of whether that expiration date occurs before or after the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent. In addition, documentary evidence that is not generally renewed or amended, such as a certificate of incorporation, may be treated as valid indefinitely until a change in circumstance occurs that makes the information on the documentary evidence incorrect.

(D) *Change of circumstances*—(*1*) *Defined.* For purposes of this chapter, a person is considered to have a change in circumstances only if such change would affect the chapter 4 status of the person. A change of circumstances includes any change that results in the addition of information described in paragraph (e)(4) relevant to a person's claim of foreign status (that is, U.S. indicia) or otherwise conflicts with such person's claim of chapter 4 status. Unless stated otherwise, a change of address or telephone number is a change in circumstances for purposes of this paragraph (c)(6)(ii)(D) only if it changes to an address or telephone number in the United States. A change in circumstances affecting the withholding information provided to the withholding agent, including allocation information or withholding pools contained in a withholding statement or owner reporting statement, will terminate the validity of the withholding certificate with respect to the information that is no longer reliable, until the information is updated.

(*2*) *Obligation to notify withholding agent of a change in circumstances.* If a change in circumstances makes any information on a certificate or other documentation incorrect, then the person whose name is on the certificate or other documentation must inform the withholding agent within 30 days of the change and furnish a new certificate, a new written statement, or new documentary evidence. If an intermediary or a flow-through entity becomes aware that a certificate or other appropriate documentation it has furnished to the person from whom it collects a payment is no longer valid because of a change in the circumstances of the person who issued the certificate or furnished the other appropriate documentation, then the intermediary or flow-through entity must notify the person from whom it collects the payment of the change of circumstances within 30 days of the date that it knows or has reason to know of the change in circumstances. It must also obtain a new withholding certificate or new appropriate documentation to replace the existing certificate or documentation whose validity has expired due to the change in circumstances.

(*3*) *Withholding agent's obligation with respect to a change in circumstances.* A certificate or other documentation becomes invalid on the date that the withholding agent holding the certificate or documentation knows or has reason to know that circumstances affecting the correctness of the certificate or documentation have changed. However, a withholding agent may choose to treat a person as having the same chapter 4 status that it had prior to the change in circumstances until the earlier of 90 days from the date that the certificate or documentation became unreliable due to the change in circumstances or the date that a new

certificate or new documentation is obtained. A withholding agent may rely on a certificate without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed. A withholding agent may require a new certificate or additional documentation at any time prior to a payment, regardless of whether the withholding agent knows or has reason to know that any information stated on the certificate or documentation has changed.

(iii) *Record Retention.* A withholding agent must retain each withholding certificate, written statement, or copy of documentary evidence for as long as it may be relevant to the determination of the withholding agent's tax liability under section 1474(a) and § 1.1474–1. A withholding agent may retain either an original, certified copy, or photocopy (including a microfiche, electronic scan, or similar means of electronic storage) of the withholding certificate, written statement, or documentary evidence. With respect to documentary evidence, the withholding agent must also note in its records the date on which and by whom the document was received and reviewed. Any documentation that is stored electronically must be made available in hard copy form to the IRS upon request during an examination.

(iv) *Electronic transmission of withholding certificate, written statement, and documentary evidence.* A withholding agent may accept a withholding certificate (including an acceptable substitute form), a written statement, or other such form as the Internal Revenue Service shall prescribe, electronically in accordance with the requirements set forth in § 1.1441–1(e)(4)(iv). A withholding certificate (including a substitute form), written statement or other such form prescribed by the IRS may be accepted by facsimile if the withholding agent confirms that the person furnishing the form is the person named on the form, the faxed form contains a signature of the person whose name is on the form, and such signature is made under penalties of perjury in the manner described in § 1.1441–1(e)(4)(iv)(B)(*3*)(*i*). A withholding agent may also accept a copy of documentary evidence electronically, including by facsimile, if the withholding agent confirms that the person furnishing the documentary evidence is the person named on the documentary evidence, the copy does not appear to have been altered from its original form, and the copy is a certified copy or notarized copy (that is, must either be certified to be a true copy of the original or must contain a notarized signed statement of the person furnishing the document that the copy is a true and accurate reproduction of the original).

(v) *Acceptable substitute withholding certificate.* A withholding agent may substitute its own form for an official Form W–8 if the substitute form meets the requirements of § 1.1441–1(e)(4)(vi) and contains all of the information relevant for determining the chapter 4 status of the person named on the form.

(vi) *Documentation to be furnished for each account unless exception applies.* Except as otherwise provided in this paragraph (c)(6)(vi), a withholding agent that is a financial institution must obtain withholding certificates or other appropriate documentation on an account-by-account basis. However, the exceptions set forth in § 1.1441–1(e)(4)(ix)(A) through (C), that permit a withholding agent to rely on documentation held through coordinated account systems, families of mutual funds, and through certain U.S. brokers, apply for purposes of documenting accounts under chapter 4 of the Internal Revenue Code.

(vii) *Reliance on a prior version of a withholding certificate.* Upon the issuance by the IRS of an updated version of a withholding certificate, a withholding agent may continue to accept the prior version of the withholding certificate for six months after the revision date shown on the updated withholding certificate, unless the IRS has issued guidance that indicates otherwise, and may continue to rely upon a previously signed prior version of the withholding certificate until its period of validity expires.

(7) *Documentation received after the time of payment.* Proof that withholding was not required under the provisions of chapter 4 of the Internal Revenue Code and the regulations thereunder also may be established after the date of payment by the withholding agent on the basis of a valid withholding certificate and/or other appropriate documentation that was furnished after the date of payment but that was effective as of the date of payment. A withholding certificate furnished after the date of payment will be considered effective as of the date of the payment if the certificate contains a signed affidavit (either at the bottom of the form or on an attached page) that states that the information and representations contained on the certificate were accurate as of the time of the payment. A certificate obtained within 15 days after the date of the payment will not be considered to be unreliable solely because it does not contain an affidavit. However, in the case of a withholding certificate of an individual received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence described in paragraph (c)(5)(i) or (ii) of this section that supports the individual's claim of foreign status. In the case of a withholding certificate of an entity received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence specified in paragraph (d) of this section applicable to an offshore account that supports the chapter 4 status claimed. In a case in which documentation other than a withholding certificate is submitted from a payee more than a year after the date of payment, the withholding agent will be required to also obtain from the payee a withholding certificate supporting the chapter 4 status claimed.

(d) *Documentation requirements to establish payee's chapter 4 status.* Unless the withholding agent knows or has reason to know otherwise, a withholding agent may rely on the provisions of this paragraph (d) to determine the chapter 4 status of a payee. Except as otherwise provided in this paragraph (d), a withholding agent is required to obtain a valid withholding certificate or a Form W–9 from the payee in order to treat the payee as having a particular chapter 4 status. Paragraphs (d)(1) through (11) of this section prescribe any additional documentation requirements that must be met in order to treat a payee as having a specific chapter 4 status. Paragraphs (d)(1) through (11) of this section also indicate when it is appropriate to rely upon documentary evidence in lieu of a Form W–8 or W–9 and the type of documentary evidence necessary. In cases where documentary evidence alone is not sufficient to establish that a payee with respect to an offshore obligation has a particular chapter 4 status, the withholding agent may supplement the documentary evidence with a written statement signed by the payee (or a person with authority to sign for the payee) under penalties of perjury that indicates that the payee meets the requirements to qualify for a particular chapter 4 status. This paragraph (d) also provides the circumstances in which special documentation rules are permitted with respect to preexisting obligations. A withholding agent may not rely on documentation described in this paragraph (d) if it knows or has reason

to know that such documentation is incorrect or unreliable as described in paragraph (e) of this section.

(1) *Identification of U.S. persons.* A withholding agent must treat a payee as a U.S. person if it has a valid Form W–9 associated with the payee or if it can presume the payee is a U.S. person under the presumption rules set forth in paragraph (f) of this section.

(2) *Identification of foreign individuals*—(i) *In general.* A withholding agent may treat a payee as a foreign individual if the withholding agent has a valid withholding certificate identifying the payee as a foreign individual.

(ii) *Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.* For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payee as a foreign individual if the withholding agent has a withholding certificate associated with the payee that meets the requirements of § 1.1441–1(e)(1)(ii) applicable to such certificate identifying the payee as a foreign individual.

(iii) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payee as a foreign individual if it obtains a government-issued identification that supports the payee's claim of chapter 4 status as a foreign individual and none of the documentation associated with the payee contains U.S. indicia described in paragraph (e)(4) of this section.

(3) *Identification of participating FFIs*—(i) *In general.* A withholding agent may treat a payee as a participating FFI only if the withholding agent has a valid withholding certificate identifying the payee as a participating FFI and the withholding certificate contains an FFI–EIN for the payee that is verified against the published IRS FFI list in the manner described in paragraph (e)(3) of this section (indicating when a withholding agent may rely upon an FFI–EIN). A withholding certificate that identifies the payee as a participating FFI but does not provide the payee's FFI–EIN or provides an FFI–EIN that does not appear on the current published IRS FFI list within 90 calendar days after the date that the claim is made, will be treated as an invalid withholding certificate for purposes of chapter 4 and the payee will be treated as an undocumented payee beginning on such date until other valid documentation or a correct FFI–EIN is provided.

(ii) *Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.* For withholdable payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payee as a participating FFI if the withholding agent has a withholding certificate associated with the payee that meets the requirements of § 1.1441–1(e)(1)(ii) that are applicable to the certificate, identifying the payee as a foreign person, the payee has provided the withholding agent, either orally or in writing, with its FFI–EIN, and the withholding agent has verified the FFI–EIN in the manner described in paragraph (e)(3) of this section.

(4) *Identification of nonparticipating FFIs*—(i) *In general.* A withholding agent is required to treat a payee as a nonparticipating FFI if the withholding agent can reliably associate the payment with a valid withholding certificate identifying the payee as a nonparticipating FFI, the withholding agent knows or has reason to know that the payee is a nonparticipating FFI, or the withholding agent is required to treat the payee as a nonparticipating FFI under the presumption rules described in paragraph (f) of this section.

(ii) *Special documentation rules for payments made to an exempt beneficial owner through a nonparticipating FFI.* A withholding agent may treat a payment made to a nonparticipating FFI as beneficially owned by an exempt beneficial owner if the withholding agent can reliably associate the payment with—

(A) A valid withholding certificate that identifies the payee as a nonparticipating FFI that is either acting as an intermediary or is a flow-through entity; and

(B) An exempt beneficial owner withholding statement that meets the requirements of paragraphs (c)(3)(iii)(B)(*1*) and (*5*) of this section and contains the associated documentation that would be necessary to establish the chapter 4 status of each exempt beneficial owner in accordance with paragraph (d)(8) of this section if it were the payee.

(5) *Identification of registered deemed-compliant FFIs*—(i) *In general.* A payee will be treated as a registered deemed-compliant FFI described in § 1.1471–5(f)(1) only if the withholding agent has a valid withholding certificate identifying the payee as a registered deemed-compliant FFI and the withholding certificate contains an FFI–EIN for the payee that the withholding agent verifies against the published IRS FFI list in the manner described in paragraph (e)(3) of this section. A withholding certificate that identifies the payee as a registered deemed-compliant FFI but does not provide an FFI–EIN or provides an FFI–EIN that does not appear on the current published IRS FFI list within 90 calendar days of the date that the claim is made will be treated as an invalid withholding certificate for purposes of chapter 4 of the Internal Revenue Code beginning on such date, and the payee will be treated as an undocumented payee from such date until a correct FFI–EIN or other valid documentation is provided.

(ii) *Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.* For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payee as a registered deemed-compliant FFI if the withholding agent has a withholding certificate associated with the payee that meets the requirements of § 1.1441–1(e)(1)(ii) applicable to such certificate identifying the payee as a foreign person, the payee has provided the withholding agent, either orally or in writing, its FFI–EIN, and the withholding agent has verified the FFI–EIN in the manner described in paragraph (e)(3) of this section.

(6) *Identification of certified deemed-compliant FFIs*—(i) *Identification of nonregistering local banks.* A withholding agent may treat a payee as a nonregistering local bank if the withholding agent can reliably associate the payment with a valid withholding certificate that identifies the payee as a foreign entity that is a nonregistering local bank, the withholding certificate contains a certification by the payee that it meets the requirements to qualify as a nonregistering local bank under § 1.1471–5(f)(2)(i), and the withholding agent has either a current audited financial statement, or if the payee does not have an audited financial statement, an unaudited financial statement or other similar financial document for the payee that supports the payee's claim that it is an FFI that operates solely as a bank (within the meaning of section 581, determined as if the FFI were incorporated in the United States) and does not contradict the payee's claim that it is eligible for certified deemed-compliant status as a nonregistering local bank. A withholding agent will have reason to know that a payee is not a nonregistering local bank if the withholding agent has knowledge that the payee operates in more than one country or the withholding agent can

determine that the payee has assets in excess of $175 million.

(ii) *Identification of retirement plans*—(A) *In general.* A withholding agent may treat a payee as a retirement plan described in § 1.1471–5(f)(2)(ii) if it can associate the payment with a valid withholding certificate in which the payee certifies that it is a retirement plan meeting the requirements of § 1.1471–5(f)(2)(ii) and the withholding agent has an organizational document associated with the payee that generally supports the payee's claim. An organizational document will generally support the payee's claim that it is a retirement plan if, for example, the organizational document indicates that the payee qualifies as a retirement plan under the laws of the jurisdiction in which the payee was organized, even if the organizational document does not specify whether the payee meets all of the requirements to qualify as a retirement plan under § 1.1471–5(f)(2)(ii), provided that no information in the organizational document contradicts the payee's claim that it qualifies as a retirement plan under § 1.1471–5(f)(2)(ii).

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payment as made to a retirement plan described in § 1.1471–5(f)(2)(ii) if it obtains a written statement, including a statement made in account opening documents, signed by the payee under penalty of perjury, in which the payee certifies that it is a retirement plan under the laws of its local jurisdiction meeting the requirements of § 1.1471–5(f)(2)(ii) and the withholding agent has an organizational document associated with the payee that generally supports the payee's claim.

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation, may treat the payee as a retirement plan described in § 1.1471–5(f)(2)(ii) if the payee is generally known to be a retirement plan in the country in which the withholding agent is located and the withholding agent has documentary evidence that establishes that the payee is a foreign entity that qualifies as a retirement plan in the country in which the payee is organized.

(iii) *Identification of non-profit organizations*—(A) *In general.* A withholding agent may treat a payee as a deemed-compliant non-profit organization described in § 1.1471–5(f)(2)(iii) if the withholding agent can associate the payment with a valid withholding certificate that identifies the payee as a non-profit organization described in § 1.1471–5(f)(2)(iii) and the payee has provided a letter from counsel concluding that the payee qualifies as a non-profit organization described in § 1.1471–5(f)(2)(iii).

(B) *Exception for offshore obligations.* A withholding agent may treat a payment with respect to an offshore obligation as made to a deemed-compliant nonprofit organization without obtaining a withholding certificate for the payee if the payee has provided a letter from counsel concluding that the payee qualifies as a non-profit organization described in § 1.1471–5(f)(2)(iii). A withholding agent may also treat the payee as a deemed-compliant nonprofit organization if the withholding agent obtains a letter from counsel indicating that the payee was organized for the purposes described in § 1.1471–5(f)(2)(iii), has an organizational document that establishes that the payee was organized in the same country in which the account is maintained by the withholding agent, is provided with a TIN for the payee issued by the tax authority of that country, and is subject to information reporting by the withholding agent as a tax-exempt charitable organization under that country's information reporting laws.

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as an deemed-compliant nonprofit organization described in § 1.1471–5(f)(2)(iii) if the payee—

(*1*) Provides a letter issued by the tax authority of the country in which the payee is organized or a letter of local counsel that certifies that the payee qualifies as a tax-exempt charity in its local jurisdiction; or

(*2*) Provides an organizational document establishing that the payee was organized as a charitable organization in the same country in which the account is maintained by the withholding agent, has provided a TIN issued by the tax authority of that country to the payee, and is reported by the withholding agent as a tax-exempt charitable organization to the tax authority of that country.

(iv) *Identification of FFIs with only low-value accounts.* A withholding agent may treat a payee as an FFI with only low-value accounts if the withholding agent can reliably associate the payment with a valid withholding certificate that identifies the payee as a foreign entity that is described in § 1.1471–5(f)(2)(iv), an organizational document that supports the payee's claim that it is an entity described in § 1.1471–5(e)(1)(i) and/or (ii), and a current audited financial statement (or if such statement is not available, an unaudited financial statement or similar financial document) for the payee and all members of its expanded affiliated group (if any) that supports the claim that the payee has no more than $50 million in assets on its balance sheet (or, in the case of a payee that is a member of an expanded affiliated group, that the group has $50 million or less in total assets on its consolidated or combined balance sheet) and that does not contradict the claim that the payee is an FFI with only low-value accounts. A withholding agent will have reason to know that a payee is not an FFI with only low-value accounts if the withholding agent has knowledge that the FFI or any member of the FFI's expanded affiliated group (if any) maintains any financial accounts with a balance or value in excess of $50,000 or the withholding agent can determine that the payee or the payee's expanded affiliated group (if any) has assets in excess of $50 million.

(*7*) *Identification of owner-documented FFIs*—(i) *In general.* A withholding agent may treat a payee as an owner-documented FFI if it meets the requirements of this paragraph (d)(7). A withholding agent may not rely upon a withholding certificate to treat a payee as an owner-documented FFI, either in whole or in part, if the withholding certificate does not contain all of the information and associated documentation required by this paragraph (d)(7).

(A) The withholding agent has a valid withholding certificate that identifies the payee as an owner-documented FFI that is not acting as an intermediary;

(B) The withholding agent agrees to treat the payee as an owner-documented FFI;

(C) The payee submits on an annual basis an FFI owner reporting statement associated with the withholding certificate that provides all of the information designated in paragraph (d)(7)(iv) of this section;

(D) The payee submits valid documentation (including any necessary waivers) associated with each individual, specified U.S. person, owner-documented FFI, exempt beneficial owner, or NFFE that holds, directly or indirectly, an interest in the payee;

(E) The withholding agent does not know or have reason to know that the payee maintains any financial account for a nonparticipating FFI or issues debt

constituting a financial account to any person in excess of $50,000; and

(F) The withholding agent does not know or have reason to know that the payee is affiliated with any other FFI other than an FFI that is also treated as an owner-documented FFI by the withholding agent.

(ii) *Auditor's letter substitute.* A payee may, in lieu of providing an FFI owner reporting statement and documentation for each owner of the FFI as described in paragraphs (d)(7)(i)(C) and (D) of this section, provide an auditor's letter, signed within one year of the date of the payment, from an unrelated and independent accounting firm or legal representative that has a location in the United States. The auditor's letter must certify that the firm or representative has reviewed the payee's documentation with respect to all of its owners in accordance with § 1.1471–4(c), that the payee meets the requirements of § 1.1471–5(f)(3), and that no owner that owns a direct or indirect interest in the payee is a nonparticipating FFI, specified U.S. person, or passive NFFE with any substantial U.S. owners. A withholding agent may rely upon an auditor's letter if it does not know or have reason to know that any of the information contained in the letter in unreliable or incorrect.

(iii) *Documentation for owners of payee.* Acceptable documentation for an individual owning an interest in the payee means a valid withholding certificate, valid Form W–9 (including any necessary waiver), or documentary evidence establishing the foreign status of the individual as set forth in paragraph (d)(2) of this section. Acceptable documentation for a specified U.S. person means a valid Form W–9 (including any necessary waiver). Acceptable documentation for all other persons owning an equity interest in the payee means documentation described in this paragraph (d), applicable to the chapter 4 status claimed by the person. The rules for reliably associating a payment with a withholding certificate or documentary evidence set forth in paragraph (c) of this section, the rules for payee documentation provided in this paragraph (d), and the standards of knowledge set forth in paragraph (e) of this section will apply to documentation submitted by the owners of the payee by substituting the phrase ''owner of the payee'' for ''payee.''

(iv) *Content of FFI owner reporting statement.* The FFI owner reporting statement provided by an owner-documented FFI must contain the information required by this paragraph (d)(7)(iv) and is subject to the general rules applicable to all withholding statements described in paragraph (c)(3)(iii)(B)(*1*) of this section. An FFI that is a partnership, simple trust, or grantor trust may substitute the FFI owner reporting statement with an NWP withholding statement described in § 1.1441–5(c)(3)(iv) or a foreign simple trust or foreign grantor trust withholding statement described in § 1.1441–5(e)(5)(iv), provided that the NWP withholding certificate or foreign simple trust or foreign grantor trust withholding certificate contains all of the information required in this paragraph (d)(7)(iv). The owner-documented FFI will be required to provide the withholding agent with an updated owner reporting statement if the withholding certificate expires due to a change in circumstances as required under paragraph (c)(6)(ii)(D) of this section.

(A) The FFI owner reporting statement must contain the name, address, TIN (if any), entity tax classification, and the type of documentation (Form W–9, Form W–8, or other documentary evidence) provided to the owner-documented FFI for every person that owns an equity interest in the payee, and must indicate that person's chapter 4 status.

(B) The FFI owner reporting statement must indicate the percentage that each person owns of the payee.

(C) The FFI owner reporting statement must also contain any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 4 of the Internal Revenue Code.

(v) *Exception for preexisting obligations.* A withholding agent may treat a payment made with respect to a preexisting obligation as made to an owner-documented FFI without requiring that the FFI provide documentation for every individual, specified U.S. person, owner-documented FFI, exempt beneficial owner, and/or NFFE that owns an interest in the payee if the withholding agent can associate the payment with a valid withholding certificate that identifies the payee as an FFI and the payee submits an FFI owner reporting statement associated with the withholding certificate that provides all of the information designated in paragraph (d)(7)(iv) of this section. In such case, the owner-documented FFI must agree to maintain and make available the documentation for every person that owns an interest, other than an interest as a creditor, in the payee upon the request of the withholding agent. A withholding agent may also treat a payment made with respect to a preexisting obligation as made to an owner-documented FFI if the withholding agent has collected documentation with respect to each individual, specified U.S. person, owner-documented FFI, exempt beneficial owner, and/or NFFE that owns a direct or indirect interest in the payee, other than an interest as a creditor, pursuant to its AML due diligence within four years of the date of payment and that documentation is sufficient to satisfy the AML due diligence requirements of the jurisdiction in which the withholding agent maintains the account.

(8) *Identification of exempt beneficial owners*—(i) *Identification of foreign governments and governments of U.S. possessions*—(A) *In general.* A withholding agent may treat a payee as a foreign government or government of a U.S. possession if it can reliably associate the payment with a valid withholding certificate that identifies the beneficial owner of the payment as a foreign government. For purposes of this paragraph (d)(8)(i), a withholding agent may rely upon a valid withholding certificate that meets the requirements of § 1.1441–1(e)(1)(ii) applicable to such certificate and identifies the payee as a foreign government or government of a U.S. possession, even if such withholding certificate does not identify the payee's chapter 4 status.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as a foreign government or a government of a U.S. possession if the payee provides a written statement that it is a foreign government or government of a U.S possession, a political subdivision of a foreign government or government of a U.S. possession, or any wholly owned agency or instrumentality of any one or more of the foregoing, and that it does not receive the payment as an intermediary on behalf of another person.

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a foreign government or government of a U.S. possession if the payee is generally known to the withholding agent to be or the payee's name reasonably indicates that it is a foreign government or government of a U.S possession, a political subdivision of a foreign government or government of a U.S. possession, or any wholly owned agency or instrumentality of any one or more of the foregoing, and the

withholding agent does not know or have reason to know that the foreign government is receiving the payment as an intermediary on behalf of another person.

(ii) *Identification of international organizations.* A withholding agent may treat a payee as an international organization if it can associate the payment with a valid withholding certificate identifying the beneficial owner of the payment as an international organization. For purposes of this paragraph (d)(8)(ii), a withholding agent may rely upon a valid withholding certificate that meets the requirements of § 1.1441–1(e)(1)(ii) applicable to such certificate and identifies the payee as an international organization, even if such withholding certificate does not identify the payee's chapter 4 status. A withholding agent may treat a payee as an international organization without requiring a withholding certificate if the name of the payee is one that is designated as an international organization by executive order (pursuant to 22 U.S.C. 288 through 288(f)) and other facts surrounding the transaction reasonably indicate that the international organization is not receiving the payment as an intermediary on behalf of another person.

(iii) *Identification of foreign central banks of issue*—(A) *In general.* A withholding agent may treat a payee as a foreign central bank of issue if it can associate the payment with a valid withholding certificate that identifies the beneficial owner of the payment as a foreign central bank of issue. For purposes of this paragraph (d)(8)(iii), a withholding agent may rely upon a valid withholding certificate that meets the requirements of § 1.1441–1(e)(1)(ii) applicable to such certificate and identifies the payee as a foreign central bank, even if such withholding certificate does not identify the payee's chapter 4 status.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payee as a foreign central bank of issue if the withholding agent has a written statement signed by the payee in which the payee states that it is a foreign central bank of issue within the meaning of § 1.1471–6(d) and the facts and circumstances surrounding the payment reasonably indicate that the payee is a foreign central bank of issue and either the payee is not receiving the payment as an intermediary on behalf of another person or the payee would be treated as the beneficial owner of the payment for purposes of § 1.1471–6(d).

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a foreign central bank of issue if the name of the payee and other facts surrounding the payment reasonably indicate that the payee is a foreign central bank of issue or the Bank for International Settlements and either the withholding agent has no reason to know that the payee is receiving the payment as an intermediary on behalf of another person or the payee would be treated as the beneficial owner of the payment for purposes of § 1.1471–6(d).

(iv) *Identification of retirement funds*—(A) *In general.* A withholding agent may treat a payee as a retirement fund described in § 1.1471–6(f) if it can associate the payment with a valid withholding certificate in which the payee certifies that it is a retirement fund meeting the requirements of § 1.1471–6(f) and—

(*1*) The withholding certificate makes a valid claim for treaty benefits under the pension plan article of a treaty; or

(*2*) The withholding agent has an organizational document associated with the payee that generally supports the payee's claim. An organizational document will generally support the payee's claim that it is a retirement fund if, for example, the organizational document indicates that the payee qualifies as a tax-exempt retirement fund under the jurisdiction in which the payee was organized, even if the organizational documents do not specify whether the payee meets all of the requirements to qualify as a retirement fund under § 1.1471–6(f), provided that no information in the organizational document contradicts the payee's claim that it qualifies as a retirement fund under § 1.1471–6(f).

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payment as made to a retirement fund described in § 1.1471–6(f) if it obtains a written statement, including a statement made in account opening documents, signed by the payee under penalty of perjury, in which the payee certifies that it is a retirement fund under the laws of its local jurisdiction meeting the requirements of § 1.1471–6(f) and the withholding agent has an organizational document associated with the payee that generally supports the payee's claim.

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation, may treat the payee as a retirement fund described in § 1.1471–6(f) if the payee is generally known to be a retirement fund in the country in which the withholding agent is located and the withholding agent has documentary evidence that establishes that the payee is a foreign entity that qualifies as a retirement fund in the country in which the payee is organized.

(v) *Identification of entities wholly owned by exempt beneficial owners.* A withholding agent may treat a payee as an entity described in § 1.1471–6(g) (referring to certain entities wholly owned by exempt beneficial owners other than those described in § 1.1471–6(g)) if the withholding agent can reliably associate the payment with—

(A) A valid withholding certificate that identifies the payee as an entity described in § 1.1471–5(e)(1)(iii) that is the beneficial owner of the payment;

(B) An owner reporting statement that contains the name, address, TIN (if any), entity tax classification, chapter 4 status, and a description of the type of documentation (Form W–8 or other documentary evidence) provided to the withholding agent for every person that owns an equity interest in the payee, that indicates the percentage that each such person owns of the payee, and that is subject to the general rules applicable to all withholding statements described in paragraph (c)(3)(iii)(B)(*1*) of this section; and

(C) Associated documentation for every owner of the payee establishing, pursuant to the documentation requirements described in paragraph (d)(8) of this section, that every owner of the payee is an entity described in § 1.1471–6 (without regard to whether the owner of the payee is a beneficial owner of the payment).

(9) *Identification of excepted FFIs*—(i) *Identification of nonfinancial holding companies*—(A) *In general.* A withholding agent may treat a payee as a holding company described under § 1.1471–5(e)(5)(i) if the withholding agent has a valid withholding certificate identifying the payee as a foreign entity that operates as a holding company for a subsidiary or group of subsidiaries that primarily engage in a trade or business other than that of a financial institution, as set forth in § 1.1471–5(e)(5)(i), and the withholding agent does not know or have reason to know that the payee or any subsidiary of payee is a financial institution, including a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle described in § 1.1471–5(e)(5)(i).

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as a holding company described under § 1.1471–5(e)(5)(i) if the withholding agent obtains:

(*1*) A written statement, including a statement contained in account opening documents, signed by the payee under penalties of perjury, in which the payee certifies that it is a foreign entity operating primarily as a holding company for a subsidiary or group of subsidiaries that primarily engages in a business other than that of a financial institution within the meaning of § 1.1471–5(e)(4), and that it is not a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle described in § 1.1471–5(e)(5)(i); or

(*2*) A copy of the payee's organizational documents (such as articles of incorporation) or consolidated financial statements that indicate that the payee is a foreign entity operating primarily as a holding company for a subsidiary or group of entities, each of which is not a financial institution, and that does not indicate that the payee is a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle described in § 1.1471–5(e)(5)(i).

(ii) *Identification of start-up companies*—(A) *In general.* A withholding agent may treat a payee as a start-up company described in § 1.1471–5(e)(5)(ii) if the withholding agent has a valid withholding certificate that identifies the payee as a start-up company that intends to operate as other than a financial institution and the withholding certificate provides the payee's formation date, that is less than 24 months prior to the date of the payment.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as a start-up company described in § 1.1471–5(e)(5)(ii) if it obtains a written statement from the payee, including a statement contained in account opening documents, signed by the payee under penalties of perjury, in which the payee certifies that it is a foreign entity formed for the purpose of operating a business other than that of a financial institution and an organizational document associated with the payee that establishes that the payee was organized less than 24 months prior to the date of the payment.

(C) *Exception for preexisting obligations.* A withholding agent may treat a payment made with respect to a preexisting obligation as made to a start-up company described in § 1.1471–5(e)(5)(ii) if the withholding agent—

(*1*) Has recorded a standard industrial classification code for the payee that unambiguously indicates that the entity intends to be engaged in a business other than as a financial institution or has a third party credit report for the payee indicating that the payee intends to be engaged in a business other than as a financial institution; and

(*2*) Has an organizational document of the payee that establishes that the payee is a foreign entity that was organized less than 24 months prior to the date of the payment.

(iii) *Identification of certain nonfinancial entities in liquidation or bankruptcy*—(A) *In general.* A withholding agent may treat a payee as an entity described in § 1.1471–5(e)(5)(iii) (applying to certain foreign entities in liquidation or bankruptcy) if the withholding agent has a valid withholding certificate that identifies the payee as a foreign entity previously engaged in business as other than that of a financial institution that is liquidating or emerging from a reorganization or bankruptcy and the withholding agent has no knowledge that the payee has claimed to be such an entity for more than three years. A withholding agent may continue to treat a payee as an entity described in this paragraph for longer than three years if it obtains, in addition to a valid withholding certificate, documentary evidence such as a bankruptcy filing or other public document that supports the payee's claim that it remains in liquidation or in bankruptcy.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payee as an entity that satisfies the requirements of § 1.1471–5(e)(5)(iii) (applying to certain foreign entities in liquidation or bankruptcy) if the withholding agent has one or more types of documentary evidence establishing that the payee is a foreign entity in liquidation or bankruptcy, (for example, a copy of the bankruptcy filing or credit report for the payee) and indicates that prior to the liquidation or bankruptcy filing, the payee was engaged in a business other than that of a financial institution (for example, a financial statement or credit report for the payee). A withholding agent that obtains documentary evidence associated with the payee that generally supports the classification of the payee as an NFFE that is in liquidation or bankruptcy but does not unambiguously establish that the payee is such an entity may rely upon the documentary evidence to treat the payee as an entity described in § 1.1471–5(e)(5)(iii) if the withholding agent also obtains a written statement, including a statement made in account opening documents, signed by the payee under penalties of perjury stating that the payee is a foreign entity in the process of liquidating its assets or reorganizing with the intent to continue or recommence its former business as a nonfinancial institution.

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat a payee as an entity described in § 1.1471–5(e)(5)(iii) if the withholding agent has previously recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is not a financial institution and has documentary evidence no more than three years old establishing that the payee is a foreign entity in liquidation or bankruptcy.

(iv) *Identification of hedging/financing centers of nonfinancial groups*—(A) *In general.* A withholding agent may treat a payee as an entity that operates as a hedging or financing center of a nonfinancial group, as described in § 1.1471–5(e)(5)(iv), if the withholding agent can associate the payment with a valid withholding certificate that identifies the payee as such an entity.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payment as made to an entity described in § 1.1471–5(e)(5)(iv) if the withholding agent has documentary evidence (for example, a consolidated financial statement or company by-laws) or a third-party credit report associated with the payee that indicates that the payee is a foreign entity that operates primarily as a hedging or financing center for its affiliated group and establishes that the members of the payee's affiliated group are engaged in a business other than that of a financial institution.

(v) *Identification of section 501(c) organizations*—(A) *In general.* A withholding agent may treat a payee as an organization described in section 501(c) if the withholding agent can associate the payment with a valid withholding certificate that identifies the payee as a section 501(c) organization and the payee has provided—

(*1*) A certification that no income or assets of the payee are distributed to, or applied for the benefit of, a private person or noncharitable entity other

than pursuant to the conduct of the payee's charitable activities, as a payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the payee has purchased; and

(*2*) Either a certification that the payee has been issued a determination letter by the IRS that is currently in effect concluding that the payee is described in section 501(c) accompanied by the date of the letter, or a copy of an opinion from U.S. counsel certifying that the payee is described in section 501(c) (without regard to whether the payee is a foreign private foundation).

(B) *Reason to know.* A withholding agent must cease to treat a foreign organization's claim that it is an organization described in section 501(c) as valid beginning on the earlier of the date on which such agent knows that the IRS has given notice to such foreign organization that it is not an organization described in section 501(c) or the date on which the IRS gives notice to the public that such foreign organization is not an organization described in section 501(c). Further, a withholding agent will have reason to know that a payee is not an organization described in section 501(c) if it has determined, pursuant to its AML due diligence, that the payee has beneficial owners (as defined for purposes of the AML due diligence).

(10) *Identification of territory financial institutions*—(i) *Identification of territory financial institutions that are beneficial owners*—(A) *In general.* A withholding agent may treat a payee as a territory financial institution if the withholding agent has a valid withholding certificate identifying the payee as a territory financial institution that beneficially owns the payment. See paragraph (d)(11)(iii) of this section for rules for documenting territory NFFEs.

(B) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation, may treat the payee as a territory financial institution if the withholding agent has no reason to know that the payee is not the beneficial owner of the payment and—

(*1*) The withholding agent has organizational documents establishing that the payee was organized or incorporated under the laws of any possession of the United States and the withholding agent has recorded a standard industrial classification code for the payee that unambiguously designates the entity as a bank, broker, or other financial institution that is not primarily engaged in the business of investing, reinvesting, or trading, as defined in section § 1.1471–5(e)(4); or

(*2*) The withholding agent has a copy of a credit report from a third-party data provider that is associated with the payee and that indicates that the payee is a bank, broker, or other financial institution not primarily engaged in the business of investing, reinvesting, or trading, as defined in section § 1.1471–5(e)(4), and that the payee was incorporated or organized under the laws of a possession of the United States.

(ii) *Identification of territory financial institutions acting as intermediaries or that are flow-through entities.* A withholding agent may treat a payment as made to a territory financial institution that is acting as an intermediary or that is a flow-through entity if the withholding agent has a valid intermediary withholding certificate or flow-through withholding certificate as described in paragraph (c)(3)(iii) of this section that identifies the person who receives the payment as a territory financial institution.

(iii) *Reason to know.* A withholding agent will have reason to know that an entity is not a territory financial institution if the withholding agent has a current residence or mailing address, either in the entity's account files or on documentation provided by the payee, for the entity outside the possession in which the entity claims to be organized, a current telephone number for the payee that has a country code other than the country code for the United States or has an area code other than the area code(s) of the applicable possession, or standing instructions for the withholding agent to pay amounts from its account to an address or account outside the applicable possession. A withholding agent that has knowledge of a current address, current telephone number, or standing payment instructions for the entity outside of the applicable possession, may nevertheless treat the entity as a territory financial institution if it obtains documentary evidence that establishes that the entity was organized in the applicable possession or obtains a reasonable explanation from the entity, in writing, establishing the entity's residence in the possession.

(11) *Identification of NFFEs*—(i) *Identification of NFFEs that are publicly traded corporations.* A withholding agent may treat a payee as an NFFE described in § 1.1472–1(c)(1)(i) (applying to an entity the stock of which is regularly traded on an established securities market) if it has a beneficial owner withholding certificate that identifies the payee as an NFFE, certifies that the payee's stock is regularly traded on one or more established securities markets, as defined in § 1.1472–1(c)(1)(i), and provides the name of an exchange upon which the payee's stock is traded.

(A) *Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.* For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payee as an NFFE described in § 1.1472–1(c)(1)(i) if the withholding agent—

(*1*) Has a beneficial owner withholding certificate associated with the payee that meets the requirements of § 1.1441–1(e)(1)(ii), applicable to such certificate, identifying the payee as a foreign corporation;

(*2*) Has documentation or other information that indicates that the payee is listed on a public securities exchange or on a stock market index; and

(*3*) Has either recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is not a financial institution or has an organizational document, financial statement, or credit report for the payee that provides sufficient information to determine that the payee is not a financial institution.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payee as an NFFE described in § 1.1472–1(c)(1)(i) if the withholding agent obtains—

(*1*) A written statement, including a statement made in account documents, signed by the payee under penalty of perjury, that states that the payee is a foreign corporation not engaged in business as a financial institution whose stock is regularly traded on an established securities market;

(*2*) The name of one of the exchanges upon which the payee's stock is traded; and

(*3*) An organizational document, financial statement, or credit report for the payee that generally supports the classification of the payee as an NFFE.

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as a entity described in § 1.1472–1(c)(1)(i) if the withholding agent has documentation or other information confirming that the payee is listed on a public securities exchange or on a stock market index and has either recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is not a

financial institution or has an organizational document, financial statement, or credit report for the payee that provides sufficient information to determine that the payee is a foreign corporation that is not a financial institution.

(ii) *Identification of NFFE affiliates.* A withholding agent may treat a payee as an NFFE described in § 1.1472–1(c)(1)(ii) (applying to an affiliate of an entity the stock of which is regularly traded on an established exchange) if it has a beneficial owner withholding certificate that identifies the payee as a foreign corporation that is an affiliate of an entity whose stock is regularly traded on an established exchange and provides the name of the entity that is regularly traded and one of the exchanges upon which the entity's stock is listed.

(A) *Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.* For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payee as an NFFE described in § 1.1472–1(c)(1)(ii) if the withholding agent:

(*1*) Has a beneficial owner withholding certificate associated with the payee that meets the requirements of § 1.1441–1(e)(1)(ii), applicable to such certificate, identifying the payee as a foreign corporation;

(*2*) Has a consolidated financial statement or a similar financial document confirming that the payee is an affiliate of an entity whose stock is listed on a public securities exchange or a stock market index; and

(*3*) Has either recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is not a financial institution or has an organizational document, financial statement, or credit report associated with the payee providing sufficient information to determine that the payee is not a financial institution.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payment as made to an NFFE described in § 1.1472–1(c)(1)(ii) if the withholding agent obtains:

(*1*) A written statement, including a statement made in account documents, signed by the payee under penalty of perjury, that states that the payee is a foreign corporation not engaged in business as a financial institution that is an affiliate of another nonfinancial entity whose stock is regularly traded on an established securities exchange;

(*2*) The name of the payee's affiliate and one of the exchanges upon which the affiliate's stock is traded; and

(*3*) An organizational document, financial statement, or credit report associated with the payee that generally supports the classification of the payee as an NFFE. Documentation will be considered to generally support the payee's status as an NFFE, for example, if it indicates that the payee was organized in a country other than the United States and provides some indication that the payee is engaged in a business other than that of a financial institution.

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as an NFFE described in § 1.1472–1(c)(1)(ii) if the withholding agent:

(*1*) Has a financial statement or other documentation indicating that the payee is a foreign corporation affiliated with an entity whose stock is listed on a public securities exchange or on a stock market index;

(*2*) Has either recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is not a financial institution or has an organizational document, financial statement, or credit report for the payee that provides sufficient information to determine that the payee is a foreign entity that is not a financial institution;

(*3*) Either has no knowledge that the payee has any of the U.S. indicia discussed in paragraph (e) of this section or may treat the payee as a foreign entity under paragraph (e)(4)(i)(B)(*2*) of this section; and

(*4*) Has no knowledge that the payee is not the beneficial owner of the payment.

(iii) *Identification of territory NFFEs.* A withholding agent may treat a payee as an NFFE described in § 1.1472–1(c)(1)(iii) (applying to an entity organized in a possession of the United States) if it has a valid beneficial owner withholding certificate that identifies the payee as an NFFE that was organized in a possession of the United States and includes a certification for chapter 4 purposes that all of the owners of the payee are bona fide residents of that possession.

(A) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat a payment as made to an NFFE described in § 1.1472–1(c)(1)(iii) (that is, an entity organized in a possession of the United States) if it—

(*1*) Has an organizational document associated with the payee establishing that the payee was organized in a possession of the United States;

(*2*) Has documentary evidence establishing that the payee is wholly owned by one or more bona fide residents of the possession of the United States in which the payee is organized or a written statement from the payee stating that it is wholly owned by one or more bona fide residents of the possession of the United States in which it was organized; and

(3) Has no reason to know that the payee is not the beneficial owner of the payment.

(B) *Exception for preexisting offshore obligations of $1,000,000 or less.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation with a balance or value of $1,000,000 or less at the close of the taxable year preceding the payment, may rely upon its review conducted for AML due diligence purposes to determine whether the owners of the payee are bona fide residents of the possession of the United States in which the payee is organized in lieu of obtaining a written statement or documentary evidence. The withholding agent relying upon this paragraph (d)(11)(iii)(B) must still obtain a withholding certificate or documentary evidence, as provided in this paragraph (d)(11)(iii), to establish that the payee was organized in a possession of the United States.

(iv) *Identification of active NFFEs.* A withholding agent may treat a payee as an active NFFE described in § 1.1472–1(c)(1)(v) if it has a valid withholding certificate identifying the payee as an active NFFE within the meaning of § 1.1472–1(c)(1)(v).

(A) *Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.* For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payment as made to an active NFFE if the withholding agent has a withholding certificate that meets the requirements of § 1.1441–1(e)(1)(ii), applicable to such certificate, identifying the payee as a foreign person, and the withholding agent has either recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is engaged in an active trade or business other than that of a financial institution or has an organizational document, financial statement, or credit report for the payee that provides sufficient information to determine that the payee

is engaged in an active trade or business other than that of a financial institution.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payee as an active NFFE if the withholding agent has an organizational document, financial statement, or credit report associated with the payee providing sufficient information to determine that the payee is a foreign entity engaged in an active trade or business other than that of a financial institution and either has no knowledge that the payee has any of the U.S. indicia discussed in paragraph (e) of this section or may treat the payee as a foreign entity under paragraph (e)(4)(i)(B)(*2*) of this section. A withholding agent that obtains documentary evidence associated with the payee that generally supports the classification of the payee as an NFFE engaged in an active business but does not unambiguously establish that payee is such an entity, may rely upon the documentary evidence to treat the payee as an active NFFE if the withholding agent also obtains a written statement, which may include a statement made in account opening documents, signed by the payee under penalty of perjury, stating that the payee is a foreign entity engaged in an active business other than that of a financial institution.

(C) *Exception for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as an active NFFE if the withholding agent—

(*1*) Either has no knowledge that the payee has any of the U.S. indicia discussed in paragraph (e) of this section or may treat the payee as a foreign entity under paragraph (e)(4)(i)(B)(*2*) of this section; and

(*2*) Has either recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is engaged in a trade or business other than that of a financial institution or has an organizational document, financial statement, or credit report for the payee providing sufficient information to determine that the payee is a engaged in an active business other than that of a financial institution.

(v) *Identification of excepted NFFEs described in § 1.1472–1(c)(1)(iv).* For rules regarding the documentation required to identify an excepted NFFE described in § 1.1472–1(c)(1)(iv), see paragraphs (d)(11)(v) of this section, as applicable.

(vi) *Identification of passive NFFEs.* A withholding agent may treat a payment as made to a passive NFFE if it has a valid withholding certificate that identifies the payee as a passive NFFE.

(A) *Transitional exception for payments made prior to January 1, 2017, with respect to preexisting obligations.* For payments made prior to January 1, 2017, with respect to a preexisting obligation, a withholding agent may treat a payment as made to a passive NFFE if the withholding agent has a withholding certificate that meets the requirements of § 1.1441–1(e)(1)(ii), applicable to such certificate, identifying the payee as a foreign person, and the withholding agent has either recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is not a financial institution or has an organizational document, financial statement, or credit report for the payee that provides sufficient information to determine that the payee is not a financial institution.

(B) *Exception for offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation may treat the payment as made to an NFFE if the withholding agent has an organizational document, financial statement, or credit report for the payee providing sufficient information to determine that the payee is a foreign entity that is not a financial institution. A withholding agent that obtains documentary evidence associated with the payee that generally supports the classification of the payee as an NFFE but does not unambiguously establish that payee is such an entity, may rely upon the documentary evidence to treat the payee as an NFFE if the withholding agent also obtains a written statement, including a statement made in account opening documents, signed by the payee under penalty of perjury, stating that the payee is a foreign entity that is not a financial institution.

(C) *Special rule for preexisting offshore obligations.* A withholding agent that makes a payment with respect to an offshore obligation that is also a preexisting obligation may treat the payee as an NFFE if the withholding agent either has no knowledge that the payee has any of the U.S. indicia discussed in paragraph (e) of this section or may treat the payee as a foreign entity under paragraph (e)(4)(i)(B)(*2*) of this section and has either recorded a standard industrial classification code for the payee that unambiguously indicates that the payee is not a financial institution or has an organizational document, financial statement, or credit report for the payee providing sufficient information to determine that the payee is not a financial institution.

(D) *Required owner certification for passive NFFEs*—(*1*) *In general.* Unless it is a WP or WT, a passive NFFE will be required to provide either a written certification that it does not have any substantial U.S. owners or the name, address, and TIN of each substantial U.S. owner of the NFFE. A territory NFFE that is a passive NFFE and is not a WP or WT will be required to provide the certification or information described in the previous sentence but only with respect to substantial U.S. owners of the NFFE that are not bona fide residents of the possession in which the NFFE was organized.

(*2*) *Exception for preexisting obligations of $1,000,000 or less.* A withholding agent that makes a payment with respect to a preexisting obligation with a balance or value of $1,000,000 or less at the close of the taxable year preceding the payment, may rely upon its review conducted for AML due diligence purposes to identify any substantial U.S. owners of the payee in lieu of the certification or information required in paragraph (d)(11)(vi)(D)(*1*) of this section if the withholding agent is subject, with respect to such account, to the laws of a jurisdiction that is FATF-compliant.

(e) *Standards of knowledge*—(1) *In general.* The standards of knowledge discussed in this section apply for purposes of determining the chapter 4 status of payees, beneficial owners, and persons who own an interest in an owner-documented FFI. A withholding agent shall be liable for tax, interest, and penalties to the extent provided under section 1474 and the regulations under that section if it fails to withhold the correct amount despite knowing or having reason to know the amount required to be withheld. A withholding agent that cannot reliably associate the payment with documentation and fails to act in accordance with the presumption rules set forth in paragraph (f) of this section may also be liable for tax, interest, and penalties. See paragraph (e)(4) in this section for the specific standards of knowledge applicable to a payee's or beneficial owner's specific claims of chapter 4 status.

(2) *Notification by the IRS.* A withholding agent that has received notification by the IRS that a claim of status as a U.S. person, a participating FFI, a deemed-compliant FFI, or other entity entitled to a reduced rate of withholding under section 1471 or 1472, is incorrect knows that such a claim is incorrect beginning on the date

that is 30 calendar days after the date the notice is received.

(3) *FFI–EIN*—(i) *In general.* A withholding agent that has received a payee's claim of status as a participating FFI or registered deemed-compliant FFI has reason to know that such payee is not such a financial institution if the payee's name and FFI–EIN do not appear on the most recent published IRS FFI list within 90 calendar days of the date that the claim is made. A payee whose registration with the IRS as a participating FFI or a registered deemed-compliant FFI is in process but has not yet received an FFI–EIN may provide a withholding agent with a Form W–8 claiming the chapter 4 status it applied for and writing ''applied for'' in the box for the FFI–EIN. In such case, the FFI will have 90 calendar days from the date of its claim to provide the withholding agent with its FFI–EIN and the withholding agent will have 90 calendar days from the date it receives the FFI–EIN to verify the accuracy of the FFI–EIN against the published IRS FFI list before it has reason to know that the payee is not a participating FFI or registered deemed-compliant FFI. If an FFI is removed from the list of participating FFIs and registered deemed-compliant FFIs published on the IRS database, the withholding agent knows that such FFI is not a participating FFI or registered deemed-compliant FFI on the earlier of the date that the withholding agent discovers that the FFI has been removed from the list or the date that is one year from the date the FFI's name was actually removed from the list.

(ii) *Special requirements applicable prior to January 1, 2016.* Prior to January 1, 2016, a withholding agent that has received a payee's claim of status as a participating FFI or registered deemed-compliant FFI has reason to know that such payee is not such a financial institution even if the payee's name and FFI–EIN appear on the most recent published IRS FFI list, if the current published IRS FFI list indicates that branches of the payee located in the same country as the branch that submitted the withholding certificate, are limited branches. Prior to January 1, 2016, a withholding agent will also have reason to know that the branch submitting the withholding certificate is a limited branch if the withholding certificate or other documentation for the branch contains an address in a country for which the FFI is shown, on the current IRS FFI list, to have limited branches. For purposes of withholding under chapter 4 of the Internal Revenue Code, a withholding agent is required to treat a limited branch as a nonparticipating FFI.

(4) *Reason to know.* A withholding agent shall be considered to have reason to know that a claim of chapter 4 status is unreliable or incorrect if its knowledge of relevant facts or statements contained in the withholding certificates or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claims made. For accounts opened on or after January 1, 2013, a withholding agent will also be considered to have reason to know that a claim of chapter 4 status is unreliable or incorrect if any information contained in its account opening files or other customer account files, including documentation collected for AML due diligence purposes, conflicts with the payee's claim of chapter 4 status.

(i) *Standards of knowledge applicable to withholding certificates*—(A) *In general.* A withholding agent has reason to know that a withholding certificate provided by a payee or beneficial owner is unreliable or incorrect if the withholding certificate is incomplete with respect to any item on the certificate that is relevant to the claims made by the payee, the withholding certificate contains any information that is inconsistent with the payee's claim, the withholding agent has other account information that is inconsistent with the payee's claim, or the withholding certificate lacks information necessary to establish entitlement to an exemption from withholding for chapter 4 purposes. A withholding agent that relies on an agent to review and maintain a withholding certificate is considered to know or have reason to know the facts within the knowledge of the agent. Paragraphs (e)(4)(i)(B) through (D) of this section do not apply to a withholding certificate provided by a participating FFI or a registered deemed-compliant FFI if the certificate contains an FFI–EIN for the FFI that the withholding agent verifies on the current published IRS FFI list as provided in paragraph (e)(3) of this section.

(B) *U.S. address or telephone number.* A withholding agent has reason to know that a withholding certificate provided by a payee is unreliable or incorrect if the withholding certificate has a current permanent residence address (as defined in § 1.1441–1(e)(2)(ii)) in the United States, the withholding certificate has a current mailing address in the United States, the withholding agent has a current residence or mailing address as part of its account information that is an address in the United States, or the payee notifies the withholding agent of a new residence or mailing address in the United States (whether or not provided on a withholding certificate). A withholding agent also has reason to know that a withholding certificate provided by a payee is unreliable or incorrect if the withholding agent knows that the payee has a current telephone number in the United States. Notwithstanding the foregoing, a withholding agent may rely upon a withholding certificate to establish the payee's status as a foreign person despite knowing that the payee has any of the U.S. indicia described in this paragraph (e)(4)(i)(B) if it may do so under the provisions of paragraphs (e)(4)(i)(B)(*1*) through (*2*) of this section.

(*1*) *Presumption of individual's foreign status.* A withholding agent other than an FFI may treat a payee or beneficial owner that is an individual as a foreign person if—

(*i*) The withholding agent has in its possession or obtains documentary evidence (that does not contain a U.S. address) that has been provided within the last three years, was valid at the time it was provided, and supports the claim of foreign status, and the payee provides the withholding agent with a reasonable explanation, in writing, supporting the account holder's foreign status; or

(*ii*) The withholding agent maintains an account for the individual at an office of the withholding agent outside the United States, the withholding agent classifies the individual as a resident of the country in which the account is maintained, the withholding agent is required to report payments made to the individual annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has an tax information exchange agreement or income tax treaty in effect with the United States.

(*2*) *Presumption of entity's foreign status.* A withholding agent may treat a payee or beneficial owner as a foreign person if the withholding certificate has been provided by an entity and—

(*i*) The withholding agent has in its possession, or obtains, documentation that substantiates that the entity is actually organized or created under the laws of a foreign country; or

(*ii*) The withholding agent maintains an account for the entity at an office of the withholding agent outside the United States, the withholding agent classifies the entity as a resident of the country in which the account is maintained, the withholding agent is required to report payments made to the

entity annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has an tax information exchange agreement or income tax treaty in effect with the United States.

(C) *U.S. place of birth*—(*1*) *Accounts opened on or after January 1, 2013.* For accounts opened on or after January 1, 2013, a withholding agent has reason to know that a withholding certificate provided by an individual payee or beneficial owner is unreliable or incorrect if the withholding agent has, either on accompanying documentation or as part of its account information, a place of birth for the payee in the United States. A withholding agent may treat the individual payee as a foreign person, notwithstanding the U.S. birth place, if the withholding agent has no knowledge that the individual has any other U.S. indicia described in this paragraph (e) and the withholding agent obtains a copy of the individual's Certificate of Loss of Nationality of the United States or Form I–407, *Abandonment of Lawful Permanent Residence Status.* A withholding agent may also treat the individual payee as a foreign person, notwithstanding the U.S. birth place, if the withholding agent obtains a non-U.S. passport or other government-issued identification evidence of citizenship in a country other than the United States and either a copy of the individual's Certificate of Loss of Nationality of the United States or Form I–407, or a reasonable explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth.

(*2*) *Accounts opened prior to January 1, 2013.* For accounts opened prior to January 1, 2013, a withholding agent will not be required to conduct a search of its documentation to identify a U.S. place of birth associated with a payee. However, if the withholding agent, on or after January 1, 2013, does review documentation that contains a U.S. birth place for a payee that is treated as a foreign person, then the account will be considered to have a experienced a change of circumstance as of the date that the withholding agent reviewed the documentation and the withholding agent will be considered to have reason to know that a payee is a U.S. person. See paragraph (c)(6)(ii)(D) of this section for rules regarding the time period allowed to cure a change in circumstance.

(D) *Standing instructions with respect to offshore obligations.* A withholding agent has reason to know that a withholding certificate provided by a payee is unreliable or incorrect if it is provided with respect to an offshore obligation and the payee or beneficial owner has standing instructions directing the withholding agent to pay amounts from its account to an address or an account maintained in the United States. The withholding agent may rely upon the withholding certificate to establish the payee's or beneficial owner's chapter 4 status, however, if the payee or beneficial owner provides documentary evidence that supports its foreign status.

(ii) *Standard of knowledge applicable to documentary evidence*—(A) *In general.* A withholding agent shall not treat documentary evidence provided by a payee as valid if the documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence. For example, documentary evidence is not valid if it is provided in person by a payee that is a natural person and the photograph or signature on the documentary evidence, if any, does not match the appearance or signature of the person presenting the document. A withholding agent may not rely on documentary evidence to reduce the rate of withholding that would otherwise apply under the presumption rules in paragraph (f) of this section if the documentary evidence contains information that is inconsistent with the payee's claim as to its chapter 4 status, the withholding agent has other account information that is inconsistent with the payee's claim, or the documentary evidence lacks information necessary to establish the payee's chapter 4 status. For example, if a payee provides a financial statement to support its claim of status as an NFFE whose stock is regularly traded on an established exchange but the financial statement only indicates that the payee is registered on an exchange but does not provide information regarding whether its stock is regularly traded, the withholding agent may not rely upon the financial statement to establish the payee's chapter 4 status unless it obtains additional documentation that supports the claim.

(B) *Establishment of foreign status.* A withholding agent may not treat documentary evidence provided by a payee as valid for purposes of establishing the account holder's foreign status if the only mailing address or residence address that is available to the withholding agent is an address at a financial institution (unless the financial institution is the payee), an in-care-of address, or a P.O. box. In this case, the withholding agent must obtain additional documentation that is sufficient to establish the payee's status as a foreign person. Documentary evidence is unreliable or incorrect to establish a payee's status as a foreign person if the withholding agent has a current residence or mailing address (whether or not on the documentation) for the payee in the United States, if the payee notifies the withholding agent of a new address in the United States, or if the withholding agent has a current telephone number for the payee in the United States. A withholding agent may, however, rely on documentary evidence as establishing the payee's foreign status if it may do so under the provisions of this paragraph (e)(4)(ii)(B).

(*1*) A withholding agent may treat a payee or other person that is an individual as a foreign person even if it has a mailing address, residence address, or telephone number for the payee in the United States if the withholding agent—

(*i*) Has in its possession or obtains additional documentary evidence (that does not contain a U.S. address) supporting the claim of foreign status and a reasonable explanation in writing supporting the payee's foreign status;

(*ii*) Has in its possession or obtains a valid beneficial owner withholding certificate on Form W–8 and the Form W–8 contains a permanent residence address outside the United States and a mailing address, if any, outside the United States (or if a mailing address is inside the United States the direct account holder provides a reasonable explanation in writing supporting the payee's claim of foreign status); or

(*iii*) The withholding agent maintains an account for the payee at an office of the withholding agent outside the United States, the withholding agent classifies the payee as a resident of the country in which the account is maintained, the withholding agent is required to report payments made to the payee annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or an income tax treaty in effect with the United States.

(*2*) A withholding agent may treat a payee or beneficial owner that is an entity as a foreign person even if it has a mailing address, residence address, or telephone number for the payee or beneficial owner in the United States if the withholding agent—

(*i*) Has in its possession, or obtains, documentation that substantiates that the entity is actually organized or created under the laws of a foreign country;

(*ii*) Obtains a valid withholding certificate on a Form W–8 and the Form W–8 contains a permanent residence address outside the United States and a mailing address, if any, outside the United States; or

(*iii*) The withholding agent maintains an account for the payee at an office of the withholding agent outside the United States, the withholding agent classifies the payee as a resident of the country in which the account is maintained, the withholding agent is required to report payments made to the payee annually on a tax information statement that is filed with the tax authority of the country in which the office is located as part of that country's resident reporting requirements, and that country has a tax information exchange agreement or an income tax treaty in effect with the United States.

(C) *U.S. place of birth*—(*1*) *Accounts opened on or after January 1, 2013.* For accounts opened on or after January 1, 2013, a withholding agent has reason to know that documentary evidence provided by an individual payee or beneficial owner to demonstrate the individual's status as a foreign person is unreliable or incorrect if the documentation contains a U.S. birth place for the payee or the withholding agent has, as part of its account information, a place of birth for the payee in the United States. A withholding agent may treat the individual payee as a foreign person, notwithstanding the U.S. birth place, if the withholding agent has no knowledge that the payee has any other U.S. indicia described in paragraph (e) of this section and the withholding agent obtains a copy of the individual's Certificate of Loss of Nationality of the United States or Form I–407. A withholding agent may also treat the individual payee as a foreign person, notwithstanding the U.S. birth place, if the withholding agent obtains a valid withholding certificate from the payee that establishes the payee's foreign status and either a copy of the individual's Certificate of Loss of Nationality of the United States or Form I–407, or a reasonable explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth.

(*2*) *Accounts opened prior to January 1, 2013.* For accounts opened prior to January 1, 2013, a withholding agent will not be required to conduct a search of its documentation to identify a U.S. place of birth associated with a payee. However, if the withholding agent, on or after January 1, 2013, does review documentation that contains a U.S. birth place for a payee that is treated as a foreign person, then the account will be considered to have a experienced a change of circumstance as of the date that the withholding agent reviewed the documentation and the withholding agent will be considered to have reason to know that a payee is a U.S. person. See paragraph (c)(6)(ii)(D) of this section for rules regarding the time period allowed to cure a change in circumstance.

(D) *Standing Instructions.* Documentary evidence is unreliable or incorrect as an indication of a payee's status as a foreign person if the payee has standing instructions directing the withholding agent to pay amounts from its account to an address or an account maintained in the United States. The withholding agent may treat the direct account holder as a foreign person, however, if the account holder provides a valid withholding certificate from the payee and either documentary evidence that supports the payee's claim of foreign status or a reasonable explanation in writing that supports its claim of foreign status.

(iii) *Information conflicting with payee's claim of chapter 4 status.* A withholding certificate, written statement, or documentary evidence is unreliable or incorrect if there is information on the face of the documentation or in the withholding agent's account files that conflicts with the payee's claim regarding its chapter 4 status. For example, a withholding agent will have reason to know that a payee's claim that it is an NFFE is unreliable or incorrect if the withholding agent has a financial statement or credit report that indicates that the payee is engaged in business as a financial institution. Further, a withholding agent that has classified the payee as a particular business type in its own records, such as through a standard industrial classification code, will have reason to know that that the payee's claim of chapter 4 status is unreliable or incorrect if the claim conflicts with the withholding agent's internal classification. A withholding agent may, however, rely upon a payee's claim regarding its chapter 4 status if it obtains both a valid withholding certificate (or written statement for a payment with respect to an offshore obligation) and documentary evidence that support the payee's claim.

(iv) *Conduit financing arrangements.* The rules set forth in § 1.1441–7(f), regarding a withholding agent's liability for failing to withhold in the case where the financing arrangement is a conduit financing arrangement, apply for purposes determining a withholding agent's liability for any withholding required under chapter 4 of the Internal Revenue Code.

(v) *Additional guidance.* The IRS may prescribe other circumstances for which a withholding certificate or documentary evidence is unreliable or incorrect in addition to the circumstances described in paragraph (e) of this section to establish a payee's chapter 4 status.

(f) *Presumptions regarding payee's status in the absence of documentation*—(1) *In general.* A withholding agent that cannot, prior to the payment, reliably associate (within the meaning of paragraph (c) of this section) a payment with valid documentation may rely on the presumptions of this paragraph (f) to determine the status of the payee as a U.S. or foreign person and the payee's other relevant characteristics (for example, as a participating FFI or a nonparticipating FFI). See paragraph (f)(8) of this section for consequences to a withholding agent that fails to withhold in accordance with the presumptions set forth in this paragraph (f) or that has actual knowledge or reason to know facts that are contrary to the presumptions set forth in this paragraph (f).

(2) *Presumptions of classification as an individual or entity.* A withholding agent that cannot reliably associate a payment with a valid withholding certificate, or that has received valid documentary evidence, as described in paragraph (c)(5) of this section, but cannot determine a payee's status as an individual or an entity from the documentary evidence, must presume that the payee is an individual if the payee appears to be an individual (for example, based on the payee's name or other indications). If the payee does not appear to be an individual, then the payee shall be presumed to be an entity.

(3) *Presumptions of U.S. or foreign status.* A payment that the withholding agent cannot reliably associate with a valid withholding certificate or documentary evidence is presumed to be made to a U.S. person, except as otherwise provided in this paragraph (f)(3).

(i) *Payments to entities with indicia of foreign status.* If a withholding agent cannot reliably associate a payment to a payee that is treated as an entity with documentation from the payee, the payee is presumed to be a foreign person and not a U.S. person—

(A) If the withholding agent has actual knowledge of the payee's EIN and that number begins with the two digits ''98'';

(B) If the withholding agent's communications with the payee are

mailed to an address in a foreign country;

(C) If the withholding agent has a telephone number for the payee outside of the United States; or

(D) If the name of the payee indicates that the entity is of a type that is on the per se list of foreign corporations contained in § 301.7701–2(b)(8)(i).

(ii) *Payments to certain exempt recipients.* If the payment is made to an entity that is treated as an exempt recipient under the provisions of § 1.6049–4(c)(1)(ii)(A)(1), (F), (G), (H), (I), (M), (O), (P), or (Q) in the case of interest, or under similar provisions under chapter 61 applicable to the type of payment involved, the payee shall be presumed to be a foreign person.

(iii) *Payments with respect to offshore obligations.* Except as otherwise provided in this paragraph (f)(3)(iii), a payment to an individual or an entity is presumed to be made to a foreign payee if the payment is made outside of the United States with respect to an offshore obligation and the withholding agent does not know or have reason to know that the payee is a U.S. person.

(4) *Presumption of chapter 4 status for a foreign entity.* A withholding agent that makes a payment to a foreign entity that it cannot reliably associate with a valid withholding certificate or documentary evidence sufficient to determine the status of that entity for purposes of chapter 4 of the Internal Revenue Code (for example, as a participating FFI, nonparticipating FFI, or NFFE) must presume that the payee is a nonparticipating FFI.

(5) *Presumption of status as an intermediary.* If a withholding agent cannot reliably associate a payment with documentation to treat the payment as made to an intermediary, then the withholding agent must treat the payment as made to an intermediary if the withholding agent has documentary evidence or other documentation that indicates, or the facts and circumstances of the transaction, including the name of the person who receives the payment or the presence of sub-account numbers, indicate that the person who receives the payment is a bank, broker, custodian, intermediary, or other agent and the withholding agent has no knowledge that the person receives the payment for its own account. Any portion of a payment that the withholding agent may treat as made to a foreign intermediary (whether a QI or an NQI) but that the withholding agent cannot treat as reliably associated with valid documentation under the rules of paragraph (c) of this section, is presumed to be made to a nonparticipating FFI. A person that the withholding agent may not reliably treat as a foreign intermediary under this paragraph (f)(5) is presumed to be a payee other than an intermediary.

(6) *Joint payees*—(i) *In general.* If a withholding agent makes a payment to joint payees and cannot reliably associate the payment with valid documentation from each payee but all of the joint payees appear to be individuals, then the payment is presumed made to an unidentified U.S. person. If any joint payee does not appear, by its name and other information contained in the account file, to be an individual, then the entire payment will be treated as made to a nonparticipating FFI. However, if one of the joint payees provides a Form W–9 furnished in accordance with the procedures described in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, the payment shall be treated as made to that payee.

(ii) *Exception for offshore obligations.* If a withholding agent makes a payment outside the United States with respect to an offshore obligation held by joint payees and cannot reliably associate a payment with valid documentation from each payee but all of the joint payees appear to be individuals, then the payment is presumed made to an unknown foreign individual if the withholding agent has no reason to know that any of the payees are U.S. persons, including knowledge of any U.S. indicia associated with any of the payees. If the withholding agent has reason to know that any payee is a U.S. person, then the payment must be treated as made to an unidentified U.S. person.

(7) *Rebuttal of presumptions.* A payee may rebut the presumptions described in this paragraph (f) by providing reliable documentation to the withholding agent or, if applicable, to the IRS.

(8) *Effect of reliance on presumptions and of actual knowledge or reason to know otherwise*—(i) *In general.* Except as otherwise provided in this paragraph (f)(8), a withholding agent that withholds on a payment under section 1471 or 1472 in accordance with the presumptions set forth in this paragraph (f) shall not be liable for withholding under this section even if it is later established that the payee has a chapter 4 status other than the status presumed. A withholding agent that fails to report and withhold in accordance with the presumptions described in this paragraph (f) with respect to a payment that it cannot reliably associate with valid documentation shall be liable for tax, interest, and penalties to the extent provided under section 1474 and the regulations under that section. See § 1.1474–1 for provisions regarding such liability if the withholding agent fails to withhold in accordance with the presumptions described in this paragraph (f).

(ii) *Actual knowledge or reason to know that amount of withholding is greater than is required under the presumptions or that reporting of the payment is required.* Notwithstanding the provisions of paragraph (f)(8)(i) of this section, a withholding agent that knows or has reason to know that the status or characteristics of the payee or of the beneficial owner are other than what is presumed under this paragraph (f) may not rely on the presumptions described in this paragraph (f) to the extent that, if it determined the status of the payee or beneficial owner based on such knowledge or reason to know, it would be required to withhold (under this section or another withholding provision of the Code) an amount greater than would be the case if it relied on the presumptions described in this paragraph (f). In such a case, the withholding agent must rely on its knowledge or reason to know rather than on the presumptions set forth in this paragraph (f). Failure to do so shall result in liability for tax, interest, and penalties to the extent provided under section 1474.

(g) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 6. Section 1.1471–4 is added to read as follows:

§ 1.1471–4 FFI agreement.

(a) *In general.* The IRS may enter into an FFI agreement with an FFI in accordance with section 1471(b), pursuant to such procedures as the IRS may prescribe. The FFI agreement, the model for which will be set forth in a Revenue Procedure, will set forth the FFI's requirements under section 1471(b) and (c). Except as otherwise provided, the FFI agreement and this section will incorporate the definitions and requirements relevant to participating FFIs as set forth in §§ 1.1471–1 through 1.1474–7. Thus, for example, the FFI agreement will incorporate the definitions of U.S. account and financial account set forth in § 1.1471–5(a) and (b), respectively. The FFI agreement will include the provisions outlined in paragraphs (1) through (8) of this paragraph (a).

(1) *Withholding.* The FFI agreement will specify the participating FFI's obligation to deduct and withhold tax with respect to passthru payments made to recalcitrant account holders and

nonparticipating FFIs. Except as otherwise provided in the FFI agreement, a participating FFI will be required to withhold in accordance with paragraph (b) of this section.

(2) *Identification and documentation of account holders.* The FFI agreement will specify a participating FFI's obligation to obtain such information regarding each holder of each account maintained by such institution as is necessary to determine which of such accounts are U.S. accounts, recalcitrant account holders, or accounts held by nonparticipating FFIs. Except as otherwise provided in the FFI agreement, a participating FFI will be required to perform the due diligence procedures for identifying and documenting account holders described in paragraph (c) of this section, and such procedures will satisfy the participating FFI's obligation to determine which of its accounts are U.S. accounts.

(3) *Reporting.* The FFI agreement will specify the participating FFI's obligation to report on an annual basis with respect to U.S. accounts under section 1471(c) and accounts held by recalcitrant account holders. Except as otherwise provided in the FFI agreement, a participating FFI will be required to report the information described in paragraph (d) of this section with respect to its U.S. accounts and recalcitrant account holders, and to comply with filing requirements described in § 1.1474–1(c) and (d) with respect to passthru payments.

(4) *Expanded affiliated group.* The FFI agreement will specify how the requirements of section 1471(b) and (c) will apply to members of the expanded group of which the participating FFI is a member, as described in paragraph (e) of this section. The agreement will also provide, as described in paragraph (e), that if certain conditions are met, the IRS may enter into a transitional FFI agreement with an FFI or members of an expanded affiliated group of FFIs even though a branch of the FFI or a member of the expanded affiliated group is unable under local law to satisfy the requirements of the FFI agreement.

(5) *Waiver.* The FFI agreement will specify the participating FFI's obligation, in any case in which foreign law would (but for a waiver) prevent the reporting required of the FFI pursuant to the FFI agreement with respect to a U.S. account, to obtain a valid and effective waiver of such law and, if a valid and effective waiver is not obtained within a reasonable period of time, to close the account.

(6) *Verification.* The FFI agreement will specify a participating FFI's obligation to comply with specified verification procedures. The agreement will require that the participating FFI adopt written policies and procedures governing its due diligence procedures for identifying and documenting account holders and its withholding and reporting requirements under the FFI agreement. The FFI agreement will further require that the participating FFI conduct periodic reviews of its compliance with these policies and procedures and its chapter 4 obligations. Based on the results of such reviews, a responsible officer of the participating FFI will periodically certify to the IRS the participating FFI's compliance with its obligations under the FFI agreement and may be required to provide certain factual information and to disclose material failures with respect to the participating FFI's compliance with any of the requirements of the FFI agreement. If the IRS identifies concerns about the compliance of the FFI based on the reporting and certifications provided by the FFI, including cases of suspected patterns of compliance failures, the IRS may verify the participating FFI's compliance with the FFI agreement through an audit, performed by an external auditor (external audit) approved by the IRS, of one or more issues selected by the IRS. The FFI agreement will not, however, require that the participating FFI arrange for periodic external audits on a predetermined basis and will not require external audits of a participating FFI on a random basis.

(7) *Event of default.* The FFI agreement will specify the compliance failures and other conditions under which a participating FFI would be in default of the FFI agreement. The agreement will provide that a compliance failure will not constitute an event of default unless such failure occurs in more than limited circumstances when a participating FFI has not substantially complied with its obligations under the FFI agreement.

(8) *Requests for additional information.* The FFI agreement will specify the participating FFI's obligation to comply with requests by the Secretary for additional information with respect to any U.S. account maintained by such institution. The FFI agreement will require that the FFI provide responses to written requests from the IRS for information relevant to the participating FFI's obligations under the FFI agreement.

(b) *Withholding requirements under the FFI agreement*—(1) *In general.* A participating FFI is required to deduct and withhold a tax equal to 30 percent of any passthru payment that is a withholdable payment made by such participating FFI to a recalcitrant account holder or a nonparticipating FFI after December 31, 2013. A participating FFI must also deduct and withhold a tax equal to 30 percent of any passthru payment that is a withholdable payment made after December 31, 2013, to a participating FFI that has made an election under section 1471(b)(3) in accordance with § 1.1471–2(a)(2)(iii)(A). Notwithstanding the foregoing, a participating FFI will not be required to withhold pursuant to this section with respect to a payment made to a recalcitrant account holder if so provided under an agreement between the IRS and a foreign government. See paragraph (b)(3) of this section for rules regarding when a participating FFI is required to withhold on any foreign passthru payment made by such participating FFI to a recalcitrant account holder or a nonparticipating FFI. See paragraph (c) of this section for the procedures for participating FFIs to identify the status of their account holders and payees in order to determine when withholding is required under this paragraph (b)(1). See § 1.1474–1(d) for the amounts subject to reporting on Form 1042–S for chapter 4 purposes and the reporting requirements for passthru payments, including the special requirement for the 2015 and 2016 calendar years for participating FFIs to report certain foreign reportable amounts made to nonparticipating FFIs.

(2) *Withholdable payment requirements.* A participating FFI is a withholding agent for purposes of chapter 4 and thus is subject to the requirements of sections 1471(a) and 1472(a) with respect to withholdable payments. A participating FFI that complies with the withholding obligations of this paragraph (b) and its FFI agreement shall be deemed to satisfy its withholding obligations with respect to withholdable payments under sections 1471(a) and 1472. See §§ 1.1471–2(a)(3) and 1.1472–1(b)(2).

(3) *Foreign passthru payments.* [Reserved].

(4) *Dormant accounts.* A participating FFI that makes a passthru payment (including any withholdable payment) to a recalcitrant account holder of a dormant account and that withholds on such payment as described in paragraph (b)(1) of this section may, in lieu of depositing the tax withheld under § 1.6302–2, set aside the amount withheld in escrow until the date that the account ceases to be a dormant account. In such a case, the tax withheld becomes due 90 days following the date that the account ceases to be a dormant

account if the account holder does not provide the documentation required under paragraph (c) of this section or becomes refundable to the account holder if the account holder provides the documentation required under paragraph (c) of this section. See paragraph (d)(6)(ii) of this section for the definition of dormant account.

(5) *Special withholding rules for U.S. branches.* A U.S. branch of a participating FFI that satisfies its backup withholding obligations under section 3406(a) with respect to accounts held at the U.S. branch by account holders that are treated as U.S. non-exempt recipients under chapter 61 will be treated as satisfying its withholding obligation with respect to such accounts under section 1471(b)(1) and this paragraph (b). See paragraph (d)(2)(iii)(B) of this section for the special reporting requirements applicable to U.S. branches of participating FFIs.

(6) *Special withholding rules for participating FFIs with limited branches and affiliates that are limited FFIs.* For the withholding requirements with respect to payments made to limited branches and affiliates that are limited FFIs, see paragraphs (e)(2)(v) and (e)(3)(iv) of this section.

(c) *Due diligence for the identification of account holders under the FFI agreement*—(1) *Scope of paragraph.* This paragraph (c) describes the procedures that participating FFIs are to follow in determining the chapter 4 status of an account holder as well as identifying and documenting U.S. accounts (as defined in § 1.1471–5(a)) and accounts other than U.S. accounts. Paragraph (c)(2) of this section provides the general rules for identification of account holders. Paragraph (c)(3) of this section provides the rules for documenting accounts held by entities. Paragraph (c)(4) of this section provides the general rules for documenting individual accounts and a special rule for documenting individual accounts that are offshore obligations. Paragraph (c)(4) also provides exceptions from the documentation requirements of this paragraph (c) for certain preexisting accounts of individual account holders and the account aggregation requirements relevant in applying these exceptions. Paragraph (c)(5) of this section provides the currency translation for determining the account balance and value for purposes of the documentation exceptions in paragraphs (c)(3) and (4). Paragraph (c)(6) of this section has examples regarding the application of the aggregation rules. Paragraph (c)(7) of this section provides an alternative procedure for documenting preexisting individual accounts that are offshore obligations. Paragraph (c)(8) of this section provides the identification and documentation procedure for preexisting accounts of individual account holders with a balance or value that exceeds $1,000,000. Paragraph (c)(9) of this section provides an exception from the electronic search and enhanced review requirements for accounts that a participating FFI has already documented as held by foreign individuals for the purpose of meeting its obligations under a QI, WP, or WT agreement. Paragraph (c)(10) of this section provides the requirement for a responsible officer of the participating FFI to certify as to the completion of the identification and documentation procedures of this paragraph (c) within the specified period of time.

(2) *Requirements with respect to the identification of account holders*—(i) *In general.* For purposes of this section, to determine the chapter 4 status of an account holder, the principles of § 1.1471–3(b) shall apply as though the participating FFI were a withholding agent making a withholdable payment and the account holder were the payee. To determine whether documentation is valid, the principles of § 1.1471–3(c) shall apply as though the participating FFI were a withholding agent making a withholdable payment and the account holder were the payee.

(ii) *Standards of knowledge.* A participating FFI may rely on documentation that is collected pursuant to the procedures set forth in this paragraph (c) or that is otherwise maintained in the participating FFI's files, unless the participating FFI knows or has reason to know that such documentation is unreliable or incorrect. Except as otherwise provided in paragraph (c)(4) of this section, to determine whether a participating FFI knows or has reason to know that the documentation collected or otherwise maintained with respect to the account holder is unreliable or incorrect, the standards of knowledge provided in § 1.1471–3(e) shall apply as though the participating FFI were a withholding agent making a withholdable payment (except that § 1.1471–3(e)(4)(i)(B)(*1*) and (ii)(B) will not apply in the case of an individual account holder) and the account holder were the payee.

(iii) *Change in circumstances.* With respect to an account that meets the documentation exceptions described in paragraphs (c)(3)(ii), (c)(4)(ii), and (c)(4)(iii) of this section, if an account no longer meets the exception in a subsequent year, this will be treated as a change in circumstances (as defined in § 1.1471–3(c)(6)(ii)(D)) and the participating FFI must obtain the appropriate documentation within the time period provided by § 1.1471–5(g)(3)(iii), or will be required to treat such account as held by a recalcitrant account holder or nonparticipating FFI. For purposes of this section, a change in circumstances also includes any change or addition of information to the account holder's account or any account associated with such account, applying the aggregation rules, if such change or addition of information affects the chapter 4 status of the account holder. For example, if a holder of a preexisting account opens another account and as part of the participating FFI's account opening procedures the account holder provides a U.S. telephone number, the participating FFI has actual knowledge that the account holder has U.S. indicia, and this will be treated as a change in circumstance with respect to the preexisting account. The participating FFI must obtain the appropriate documentation described in paragraph (c)(4)(i)(B)(*3*) of this section within the time period provided by § 1.1471–5(g)(3)(iii), or will be required to treat such account as held by a recalcitrant account holder.

(iv) *Record retention.* A participating FFI must retain either an original, certified copy, or photocopy (including a microfiche, scan, or similar means of record retention) of the documentation collected to determine the chapter 4 status of its account holders. With respect to preexisting accounts, a participating FFI must retain the documentation collected, including requests made and responses to relationship manager inquiries, and all results from electronic searches, for six calendar years following the year in which the account identification procedures of this paragraph (c) were performed. Upon the request of the IRS, a participating FFI may be required to extend the six year retention period when such request is made by the IRS prior to the end of the six year retention period.

(3) *Identification procedure and documentation for entity accounts*— (i) *In general.* To determine the documentation requirements and presumption rules applicable to an account held by an entity, a participating FFI shall apply the principles of § 1.1471–3(d) and (f) (as applicable to entities) as though the participating FFI were a withholding agent making a withholdable payment, and the account holder were the payee. For preexisting entity accounts, a participating FFI must perform the requisite identification procedures and

obtain the appropriate documentation within one year of the effective date of its FFI agreement for any account holder that is a prima facie FFI, as defined in § 1.1471–2(a)(4)(ii)(B), and within two years of the effective date of its FFI agreement for all other entity accounts, except as otherwise provided in paragraph (c)(3)(ii) of this section.

(ii) *Documentation exception for certain preexisting entity accounts.* Unless the participating FFI elects otherwise, a participating FFI is not required to document a preexisting entity account that is an offshore obligation as a U.S. account or an account held by a nonparticipating FFI if the conditions of paragraphs (c)(3)(ii)(A) and (B) are met. A participating FFI is also not required to treat such account as undocumented for withholding and reporting purposes. An account that meets this exception as of the effective date of the participating FFI's FFI agreement will be treated as meeting this exception until the account balance or value exceeds $1,000,000 at the end of any subsequent calendar year, applying the aggregations rules of paragraph (c)(3)(ii)(B)(*2*).

(A) *Previously identified accounts.* The condition of this paragraph (c)(3)(ii)(A) is met if no holder of the account that has previously been documented by the FFI as a U.S. person for purposes of chapters 3 or 61 is a specified U.S. person for purposes of this chapter.

(B) *Account threshold*—(*1*) *In general.* The condition of this paragraph (c)(3)(ii)(B) is met if, with respect to the preexisting entity account and, to the extent required under paragraph (c)(3)(ii)(B)(*2*) or (*3*) of this section, all accounts held (in whole or in part) by the holder of the account, the aggregate balance or value of the account as of the effective date of the participating FFI's FFI agreement or at the end of any subsequent calendar year is $250,000 or less (or the equivalent in foreign currency calculated under paragraph (c)(5) of this section). For rules for determining the balance or value of accounts that apply for purposes of this paragraph (c)(3)(ii)(B), see paragraph (d)(4)(iii) of this section.

(*2*) *Aggregation of entity accounts.* For purposes of determining the aggregate balance or value of accounts held by an entity in applying the exception in this paragraph (c)(3)(ii), an FFI will be required to take into account all accounts held by entities that are maintained by the FFI, or members of its expanded affiliated group, to the extent that the FFI's computerized systems link the accounts by reference to a data element such as client number or taxpayer identification number (including an EIN) and allow account balances to be aggregated.

(*3*) *Special aggregation rule applicable to relationship managers.* For purposes of determining the aggregate balance or value of accounts held by an entity in applying the exception in this paragraph (c)(3)(ii), an FFI shall also be required to aggregate all accounts (including any accounts held by individuals) that a relationship manager knows or has reason to know are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person.

(*4*) *Election to forgo exception.* A participating FFI may elect to disregard the exception described in paragraphs (c)(3)(ii) of this section by documenting an account pursuant to the rules provided in this paragraph (c) and by treating any undocumented account as an account held by a nonparticipating FFI.

(4) *Identification procedure and documentation for individual accounts*—(i) *In general.* Except as otherwise provided in this paragraph (c), a participating FFI is required to collect a Form W–9 or W–8 from each individual account holder in order to identify its U.S. accounts (as defined in § 1.1471–5(a)) and accounts other than U.S. accounts. For an individual account that is an offshore obligation, however, the requirement of the preceding sentence to obtain a Form W–8 to establish each individual account holder's foreign status shall not apply if the participating FFI obtains documentary evidence that meets the requirements of § 1.1471–3(c)(5) (as applicable to individuals). Except as otherwise provided in this paragraph (c), a participating FFI is also required to review all information collected with respect to the opening or maintenance of each account, including documentation collected as part of the participating FFI's account opening procedures and documentation collected for other regulatory purposes to determine if an account holder has U.S. indicia. For example, if an account holder provides a passport as part of the participating FFI's account opening procedures, the participating FFI is required to review the passport to check for a U.S. place of birth. However, a participating FFI is not required to treat a passport as containing a U.S. place of birth unless the passport unambiguously indicates the country or state in which the individual was born. See § 1.1471–5(g)(3) to determine the period of time by which a participating FFI must perform the account identification procedures and obtain the appropriate documentation described in this paragraph (c) before it must treat the account holder as a recalcitrant account holder.

(A) *U.S. Indicia.* For purposes of the account identification procedures described in this paragraph (c), an account holder is treated as having U.S. indicia if the information required to be reviewed by the FFI with respect to the account includes any of the following:

(*1*) Identification of an account holder as a U.S. resident or citizen;

(*2*) U.S. place of birth;

(*3*) U.S. resident address or U.S. mailing address (including a U.S. post office box);

(*4*) U.S. telephone number;

(*5*) Standing instructions to transfer funds to an account maintained in the United States;

(*6*) Power of attorney or signatory authority granted to a person with a U.S. address; or

(*7*) An ''in-care-of'' address or ''hold mail'' address that is the sole address the FFI has identified for the account holder.

(B) *Documentation required for U.S. indicia.* For all accounts holders having one or more of the U.S. indicia described in paragraph (c)(4)(i)(A) of this section, a participating FFI is required to obtain the documentation described in paragraphs (c)(4)(i)(B)(*1*) through (*5*), applicable to the type of U.S. indicia, to establish whether the account is a U.S. account.

(*1*) If the account holder is identified as a U.S. resident or citizen, the participating FFI must request a Form W–9 and a valid and effective waiver as described in section 1471(b)(1)(F)(i), if necessary, from the account holder.

(*2*) If the account holder information unambiguously indicates a U.S. place of birth, the participating FFI must request either a Form W–9 and a valid and effective waiver described in section 1471(b)(1)(F)(i), if necessary, or a Form W–8BEN and a non-U.S. passport or other government-issued identification evidencing citizenship in a country other than the United States. In addition, to establish the foreign status of any account holder with a U.S. place of birth, the participating FFI must obtain a copy of the individual's Certificate of Loss of Nationality of the United States or Form I–407, or a reasonable explanation of the account holder's renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth.

(*3*) If the account holder information contains a U.S. address, U.S. mailing address, or telephone number in the United States, the participating FFI must request either a Form W–9 (and a

valid and effective waiver described in section 1471(b)(1)(F)(i), if necessary), or a Form W–8BEN and a non-U.S. passport or other government-issued identification evidencing citizenship in a country other than the United States.

(*4*) If the account holder information contains standing instructions to transfer funds to an account maintained in the United States, the participating FFI must request either a Form W–9 and a valid and effective waiver described in section 1471(b)(1)(F)(i), if necessary, or a Form W–8BEN and documentary evidence, as described in § 1.1471–3(c)(5), establishing foreign status.

(*5*) If the account holder information contains a power of attorney or signatory authority granted to a person with a U.S. address or has an ''in care of'' address or ''hold mail'' address that is the sole address identified for the account holder, the participating FFI must request either a Form W–9 and a valid and effective waiver described in section 1471(b)(1)(F)(i), if necessary, a Form W–8, or documentary evidence, as described in § 1.1471–3(c)(5), establishing foreign status.

(ii) *Preexisting accounts of individual account holders documented as U.S. accounts.* If a participating FFI has documented an individual account holder as a U.S. person for purposes of chapter 3 or 61 and such account holder is a specified U.S. person, the account holder's account will be treated as a U.S. account for chapter 4 purposes. Notwithstanding the previous sentence, a participating FFI is not required to treat a preexisting account or account other than a preexisting account held by an individual account holder as a U.S. account if such account is a depository account that meets the exception to U.S. account status described in § 1.1471–5(a)(4)(i) (applying to depository accounts with a value or balance of $50,000 or less), unless the participating FFI elects otherwise. An account that no longer meets the exception from U.S. account status described in § 1.1471–5(a)(4)(i) because the balance or value of the account exceeds $50,000 may qualify for the documentation exception described in paragraph (c)(4)(iii) of this section.

(iii) *Exception for certain preexisting accounts of individual account holders other than accounts described in § 1.1471–4(c)(4)(iv).* Unless the participating FFI elects otherwise, a participating FFI is not required to document a preexisting individual account as a U.S. account or an account held by a recalcitrant account holder if the account is not an account described in paragraph (c)(4)(iv) of this section, the account threshold in paragraph (c)(4)(iii)(A) is met, and no holder of the account has been documented by the FFI as a U.S. person for purposes of chapter 3 or 61 that is a specified U.S. person. An account that meets this exception as of the effective date of the participating FFI's FFI agreement will be treated as meeting this exception until the account balance or value exceeds $1,000,000 at the end of any subsequent calendar year.

(A) *Account threshold.* The conditions of this paragraph (c)(4)(iii)(A) are met if, with respect to the account (including for this purpose accounts aggregated under paragraphs (c)(4)(iii)(B) and (C) of this section), the aggregate balance or value of the account as of the effective date of the participating FFI's FFI agreement is $50,000 or less (or the equivalent in foreign currency calculated under paragraph (c)(5) of this section). For rules for determining the balance or value of financial accounts that apply for purposes of this paragraph (c)(4)(iii), see paragraph (d)(4)(iii)(A) of this section. An account that meets this exception as of the effective date of the participating FFI's FFI agreement will be treated as meeting this exception until the account balance or value exceeds $1,000,000 at the end of any subsequent calendar year.

(B) *Aggregation of individual accounts.* For purposes of determining the aggregate balance or value of accounts held by a person, other than accounts described in paragraph (c)(4)(iv), in applying the exception in this paragraph (c)(4)(iii), an FFI will be required to aggregate all accounts maintained by the FFI, or members of its expanded affiliated group, but only to the extent that the FFI's computerized systems link the accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances to be aggregated. Each holder of a jointly held account will be attributed the entire balance of the jointly held account for purposes of applying the aggregation requirements described in this paragraph.

(C) *Special aggregation rule applicable to relationship managers.* For purposes of determining the aggregate balance or value of accounts held by a person in applying the exception in this paragraph (c)(4)(iii), an FFI shall also be required, in the case of any accounts that a relationship manager knows or has reason to know are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.

(iv) *Exception for certain cash value insurance or annuity contracts of individual account holders that are preexisting obligations.* Unless the participating FFI elects otherwise, a participating FFI is not required to document a preexisting individual account that is an account described in § 1.1471–5(b)(1)(iv) as a U.S. account or an account held by a recalcitrant account holder if the conditions of paragraphs (c)(4)(iv)(A) and (B) of this section are met. An account that meets this exception as of the effective date of the participating FFI's FFI agreement will be treated as meeting this exception until the account balance or value exceeds $1,000,000 at the end of any subsequent calendar year.

(A) *Individuals.* The condition of this paragraph (A) is met if each holder of such account is an individual.

(B) *Account threshold*—(*1*) *In general.* The condition of this paragraph (c)(4)(iv)(B) is met if, with respect the account (including for this purpose accounts aggregated under paragraphs (c)(4)(iv)(B)(*2*) and (*3*) of this section), the aggregate value of the account as of the effective date of the participating FFI's FFI agreement is $250,000 or less (or the equivalent in foreign currency calculated under paragraph (c)(5) of this section). For rules for determining the value of an account that apply for purposes of this paragraph (c)(4)(iv) see paragraph (d)(4)(iii)(A) of this section.

(*2*) *Aggregation of accounts.* For purposes of determining the aggregate value of accounts described in § 1.1471–5(b)(1)(iv) held by an individual in applying the exception in this paragraph (c)(4)(iv), an FFI will be required to aggregate all accounts described in paragraph § 1.1471–5(b)(1)(iv) maintained by the FFI, or members of its expanded affiliated group, but only to the extent that the FFI's computerized systems link the accounts by reference to a data element such as client number or taxpayer identification number, and allow account values to be aggregated. Each holder of a jointly held account will be attributed the entire balance of the jointly held account for purposes of applying the aggregation requirements described in this paragraph.

(*3*) *Special aggregation rule applicable to relationship managers.* For purposes of determining the aggregate value of accounts described in § 1.1471–5(b)(1)(iv) held by a person in applying the exception in this paragraph (c)(4)(iv), an FFI shall also be required to aggregate all accounts described in § 1.1471–5(b)(1)(iv) held by such person that a relationship manager, has the ability to aggregate.

(v) *Election to forgo exception.* A participating FFI may elect to disregard the exceptions described in paragraphs

(c)(4)(iii) and (iv) of this section by documenting an account pursuant to the rules provided in this paragraph (c) and by treating any undocumented account as an account held by a recalcitrant account holder pursuant to the rules provided in § 1.1471–5(g).

(5) *Currency translation.* To the extent that an account is denominated in a currency other than the U.S. dollar, the participating FFI must convert the dollar threshold amounts described in paragraphs (c)(3)(ii)(B), (c)(4)(iii)(A), and (c)(4)(iv)(B) into such currency using a spot rate determined under § 1.988–1(d). The spot rate must be determined as of the last day of the calendar year preceding the year in which the FFI is determining the threshold amounts.

(6) *Examples.*

Example 1. Aggregation rules applicable to preexisting equity interests that are accounts held by an individual account holder. U, a U.S. resident individual, holds 100 shares of common stock of FFI1, an FFI described in section 1471(d)(5)(C). On the effective date of FFI1's FFI agreement, the common stock held by U is worth $45,000. U also holds shares of preferred stock of FFI1. Neither FFI1's common stock nor FFI1's preferred stock is regularly traded on an established securities market. On the effective date of FFI1's FFI agreement, the preferred stock shares are worth $35,000. U also holds debt instruments issued by FFI1 that are not regularly traded on an established securities market. On the effective date of CB's FFI agreement, the FFI1 debt instruments are worth $15,000. U's common and preferred equity interests are associated with U and with one another by reference to U's taxpayer identification number in FFI1's computerized information management system. However, U's debt instruments are not associated with U's equity interests in FFI1's computerized information management system. None of these accounts are managed by a relationship manager. Previously, FFI1 was not required to and did not obtain a Form W–9 from U for purposes of chapter 3 or 61. U's FFI1 debt interests are eligible for the paragraph (c)(4)(iii) documentation exception because that account does not exceed the $50,000 threshold described in paragraph (c)(4)(iii)(A) of this section, taking into account the aggregation rule described in paragraph (c)(4)(iii)(B). However, U's common and preferred equity interests are not eligible for the paragraph (c)(4)(iii) documentation exception because the accounts exceed the $50,000 threshold described in paragraph (c)(4)(iii)(A) of this section, taking into account the aggregation rules described in paragraph (c)(4)(iii)(B).

Example 2. Aggregation rules for owners of entity accounts. In Year 1, U, a U.S. resident individual, maintains a depository account that is a preexisting account in CB, a commercial bank. The balance in U's depository account on the effective date of CB's FFI agreement is $20,000. U also owns 100% of Entity X which maintains a depository account that is a preexisting account in CB and 50% of Entity Y which maintains a depository account that is a preexisting account in CB. The balance in Entity X's account on the effective date of CB's FFI agreement is $130,000 and the balance in Entity Y's account on the effective date of CB's FFI agreement is $110,000. All three accounts are associated with one another in CB's computerized information management system by reference to U's tax identification number. None of the accounts are managed by a relationship manager. Previously, FFI1 was not required to and did not obtain a Form W–9 from U for purposes of chapter 3 or 61. U's depository account would qualify for the paragraph (c)(4)(i) exception to U.S. account status because it does not exceed the $50,000 threshold, taking into account the aggregation rule described in § 1.1471–5(a)(4)(i)(B)(*2*). Entity X's account and Entity Y's account qualify for the paragraph (c)(3)(ii) documentation exception because the accounts do not exceed the $250,000 threshold described in paragraph (c)(3)(ii)(B)(*1*) taking into account the aggregation rule described in paragraph (c)(3)(ii)(B)(*2*).

(7) *Alternative identification procedure for preexisting individual accounts that are offshore obligations*—(i) *In general.* Except as otherwise provided under paragraph (c)(8) of this section and in lieu of reviewing all information collected with respect to an account holder, a participating FFI may instead rely on the procedures described in this paragraph (c)(7) with respect to a preexisting individual account that is an offshore obligation. A participating FFI that follows the procedures described in this paragraph (c)(7) with respect to its preexisting individual accounts will not be attributed knowledge with respect to information contained in any account files that the participating FFI did not review and was not required to review under this paragraph (c)(7). Thus, for example, if a participating FFI was only required to perform an electronic search with respect to a preexisting individual account and no U.S. indicia was located in the results of the electronic search, the participating FFI would not have reason to know that the individual was a U.S. person, even if the participating FFI had on file (but was not required to and did not review) a copy of the individual's passport which indicates that the individual was born in the United States. Additionally, solely for purposes of this paragraph (c)(7), a participating FFI will be treated as having obtained the documentary evidence set forth in paragraphs (c)(4)(i)(B)(*2*) through (*5*) of this section if the participating FFI retains a record in its files noting that the documentary evidence has been examined, including the type of document and the name of the employee that reviewed the document.

(ii) *Electronic search.* Among the preexisting individual accounts described in paragraph (c)(7)(i) of this section that were not previously documented as U.S. accounts, a participating FFI must determine whether the electronically searchable information, as defined in § 1.1471–1(b)(15), associated with an account and maintained by the participating FFI includes U.S. indicia, as defined in paragraph (c)(4)(i)(A) of this section, and if so, the FFI must obtain the appropriate documentation relevant to the type of U.S. indicia as set forth in paragraphs (c)(4)(i)(B)(*1*) through (*5*) of this section. For purposes of this paragraph (c)(7)(ii), an FFI will not be required to treat an account holder as having U.S. indicia solely because the only address it has for the account holder in its electronically searchable information is an in-care-of address outside of the United States. Except as otherwise provided in this paragraph (c)(7)(ii), a participating FFI must complete the electronic search described in this paragraph (c)(7)(ii) with respect to its preexisting individual accounts not previously identified as U.S. accounts and obtain the appropriate documentation within two years of the effective date of its FFI agreement, or will be required to treat such accounts as held by recalcitrant account holders under § 1.1471–5(g)(3)(i)(A). For all preexisting individual accounts that are treated as high-value accounts, as described in paragraph (c)(8)(i) of this section, a participating FFI must complete the electronic search described in this paragraph (c)(7)(ii), in addition to the enhanced review for high-value accounts described in paragraph (c)(8)(i) of this section, and obtain the appropriate documentation within the applicable time period provided in § 1.1471–5(g)(3)(i)(B) or (C), or will be required to treat such accounts as held by recalcitrant account holders.

(8) *Additional enhanced review for high-value accounts*—(i) *In general.* All preexisting individual accounts not identified as U.S. accounts under paragraph (c)(4)(ii) or (c)(7)(ii) of this section and that have a balance or value that exceeds $1,000,000 at the end of the calendar year preceding the effective date of the participating FFI's FFI agreement, or at the end of any subsequent calendar year, will be treated as a high-value account subject to the additional enhanced review requirements described in this paragraph (c)(8). For purposes of determining the balance or value of an

account, a participating FFI must apply the aggregation rules of paragraphs (c)(4)(iii)(B) and (C) of this section. If a participating FFI applied the enhanced review procedures of paragraphs (c)(8)(iii)(A) and (B) of this section to an account in a previous year, the participating FFI will not be required to re-apply such procedures to such account in a subsequent year.

(ii) *Relationship manager inquiry.* With respect to all high-value accounts described in paragraph (c)(8)(i) of this section, a participating FFI must identify all accounts to which a relationship manager is assigned (including any accounts aggregated with such account) and for which the relationship manager has actual knowledge that the account holder is a U.S. person. In such case, the participating FFI must obtain from the account holder a Form W–9, and a valid and effective waiver as described in section 1471(b)(1)(F)(i), if necessary. A participating FFI must identify such accounts and obtain the appropriate documentation within one year of the effective date of its FFI agreement, or will be required to treat the holder of such account as a recalcitrant account holder as provided in § 1.1471–5(g)(3)(i)(B). In order to meet its obligations under the FFI agreement, a participating FFI is also required to implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the account holder has a new mailing address in the United States, the participating FFI will be required to treat the new address as a change in circumstances and will be required to obtain the appropriate documentation from the account holder as described in paragraph (c)(4)(i)(B)(*3*) of this section.

(iii) *Enhanced review*—(A) *In general.* For all high-value accounts described in paragraph (c)(8)(i) that were not identified as U.S. accounts in paragraph (c)(8)(ii) of this section, a participating FFI must perform a review of the current customer master file and the documents described in paragraphs (c)(8)(iii)(B)(*1*) through (*5*) that are associated with the account and were obtained by the participating FFI within the last five years. If a participating FFI discovers that an account holder has U.S. indicia as described in paragraph (c)(4)(i)(A) with respect to the account, the participating FFI is to obtain the appropriate documentation described in paragraphs (c)(4)(i)(B)(*1*) through (*5*) of this section to establish whether the account is a U.S. account within the period of time provided under § 1.1471–5(g)(3)(i)(C). The documents to be reviewed by the participating FFI are the records contained in the current customer master file and to the extent not contained in the current customer master file—

(*1*) The most recent documentary evidence that satisfies the requirements of § 1.1471–3(c)(5);

(*2*) The most recent account opening contract or documentation;

(*3*) The most recent documentation obtained by the participating FFI for purposes of AML due diligence or for other regulatory purposes;

(*4*) Any power of attorney or signature authority forms currently in effect; and

(*5*) Any standing instructions to transfer funds currently in effect.

(B) *Limitations on the enhanced review.* A participating FFI is required to perform an enhanced review of its files only to the extent the information described in paragraphs (c)(8)(iii)(B)(*1*) through (*6*) is not available in the FFI's electronically searchable information. The information described in the preceding sentence is—

(*1*) The account holder's nationality and/or residence status;

(*2*) The account holder's current residence address and mailing address;

(*3*) The account holder's current telephone number(s);

(*4*) Whether there are standing instructions to transfer funds in the account to an account at another branch of the participating FFI or another financial institution;

(*5*) Whether there is a current ''in care of'' address or ''hold mail'' address for the account holder if no other residence or mailing address is found for the account; and

(*6*) Whether there is any power of attorney or signatory authority for the account.

(iv) *Exception for certain documented accounts of individual account holders.* A participating FFI is not required to perform the enhanced review provided in paragraph (c)(8)(iii) of this section with respect to any account with respect to which the participating FFI has obtained a Form W–8BEN and documentary evidence that satisfies the requirements of § 1.1471–3(c)(5) and establishes the foreign status of the account holder. The participating FFI is required, however, to perform the relationship manager inquiry described in paragraph (c)(8)(ii) of this section if the account is a high-value account described in paragraph (c)(8)(i) of this section.

(9) *Exception for preexisting individual accounts that a participating FFI has documented as held by foreign individuals for purposes of meeting its obligations under chapter 61 or its QI, WP, or WT agreement.* A participating FFI that has previously obtained documentation from an account holder to establish the account holder's status as a foreign individual in order to meet its obligations under its QI, WP, or WT agreement with the IRS, or to fulfill its reporting obligations as a U.S. payor under chapter 61 of the Code, is not required to perform the electronic search described in paragraph (c)(7)(ii) of this section or the enhanced review described in paragraph (c)(8)(iii) of this section for such account. The participating FFI is required, however, to perform the relationship manager inquiry described in paragraph (c)(8)(ii) of this section if the account is a high-value account described in paragraph (c)(8)(i) of this section.

(10) *Certifications of responsible officer.* In order for a participating FFI to meet its obligations under the FFI agreement with respect to its identification procedures for financial accounts that are preexisting obligations, a responsible officer of the participating FFI must certify to the IRS within one year of the effective date of its FFI agreement that the participating FFI has completed the review of all high-value accounts to the extent described in paragraphs (c)(8)(ii) and (iii) of this section and to the best of the responsible officer's knowledge, after conducting a reasonable inquiry, the participating FFI did not have any formal or informal practices or procedures in place from August 6, 2011, through the date of such certification to assist account holders in the avoidance of chapter 4 of the Internal Revenue Code. Practices or procedures that assist account holders in the avoidance of chapter 4 include, for example, instructing account holders to split up accounts to avoid classification as a high-value account. Additionally, a responsible officer of the participating FFI must certify to the IRS within two years of the effective date of its FFI agreement that it has completed the account identification procedures and documentation requirements of this paragraph (c) for all financial accounts that are preexisting obligations or, if it has not obtained the documentation required to be obtained under this paragraph (c) with respect to an account, treats such account in accordance with the requirements of its FFI agreement.

(d) *Account reporting under FFI agreement*—(1) *Scope of paragraph.* This paragraph (d) provides rules addressing the information reporting requirements applicable to participating FFIs with respect to U.S. accounts (as

defined in § 1.1471–5(a)(2)) and recalcitrant account holders (as defined in § 1.1471–5(g)). Paragraph (d)(2) of this section describes the accounts subject to reporting under this paragraph (d), and specifies the participating FFI that is responsible for reporting an account or account holder. Paragraph (d)(3) of this section describes the information required to be reported and the manner of reporting by a participating FFI under section 1471(c)(1) with respect to a U.S. account. Paragraph (d)(4) of this section provides definitions of terms applicable to paragraph (d)(3). Paragraph (d)(5) of this section describes the conditions for a participating FFI to elect to report its U.S. accounts under section 1471(c)(2) and the information required to be reported under such election. Paragraph (d)(6) of this section provides rules for a participating FFI to report its recalcitrant account holders. Paragraph (d)(7) of this section provides special reporting rules applicable to reports due in 2014, 2015, and 2016. Paragraph (d)(8) of this section prescribes the reporting requirements of a qualified intermediary that is a participating FFI with respect to U.S. accounts. Paragraphs (d)(9) and (10) of this section prescribe, respectively, the reporting requirements of a withholding foreign partnership and a withholding foreign trust that is a participating FFI with respect to its U.S. accounts.

(2) *Reporting requirements in general*—(i) *Accounts subject to reporting.* Subject to the rules of paragraph (d)(7) of this section, a participating FFI shall report by the time and in the manner prescribed in paragraph (d)(3)(vi) of this section, the information described in paragraph (d)(3) with respect to accounts that it is required under its FFI agreement and this section to treat as U.S. accounts maintained at any time during each calendar year that it is responsible for reporting under paragraph (d)(2)(ii) of this section, including accounts which are identified as U.S. accounts by the end of such calendar year pursuant to a change in circumstances occurring by the end of such year as described under paragraph (c)(2)(iii) of this section. Alternatively, a participating FFI may elect to report under paragraph (d)(5) of this section with respect to such accounts for each calendar year. With respect to accounts held by recalcitrant account holders, a participating FFI is required to report with respect to each calendar year under paragraph (d)(6) of this section and not under paragraph (d)(3) or (5) of this section. For separate reporting requirements of participating FFIs with respect to passthru payments and for transitional rules for participating FFIs to report certain foreign reportable amounts made to nonparticipating FFIs, see § 1.1474–1(d)(2)(i) and (ii).

(ii) *Financial institution required to report an account*—(A) *In general.* Except as otherwise provided in paragraph (d)(2)(ii)(B) or (C) of this section, the participating FFI that maintains an account is responsible for reporting the account in accordance with the requirements of paragraph (d)(2)(i) of this section for each calendar year. A participating FFI is not required to report under paragraph (d)(2)(i) of this section with respect to any account it maintains for another participating FFI even if that other participating FFI holds the account as an intermediary on behalf of an account holder of such other FFI.

(B) *Special reporting of account holders of territory financial institutions.* In the case of an account held by a territory financial institution acting as an intermediary with respect to a withholdable payment—

(*1*) If the territory financial institution agrees to be treated as a U.S. person with respect to the payment under § 1.1471–3(c)(3)(iii)(F), a participating FFI is not required to report under paragraph (d)(2)(i) of this section with respect to the account holders of the territory financial institution; or

(*2*) If the territory financial institution does not agree to be treated as a U.S. person with respect to a withholdable payment, the participating FFI must report with respect to each specified U.S. person or substantial U.S. owner of a foreign entity that is a passive NFFE with respect to which the territory financial institution acts as an intermediary and provides the participating FFI with the information and documentation required under § 1.1471–3(c)(2)(iii)(G).

(C) *Election for branch reporting.* A participating FFI may elect to comply with its obligation to report under paragraph (d)(3) or (d)(5) of this section by reporting its accounts on a branch-by-branch basis with respect to one or more of its branches. A participating FFI that makes this election shall identify each branch that will report its accounts separately. A branch that reports under this election shall file with the IRS the information required to be reported on accounts that it maintains in accordance with the forms and their accompanying instructions provided by the IRS for purposes of this election. For the definition of a branch that applies for purposes of this paragraph (d), see paragraph (e)(2)(ii) of this section.

(iii) *Special rules for U.S. payors*—(A) *Special reporting rule for U.S. payors other than U.S. branches.* Participating FFIs that are U.S. payors (other than U.S. branches) that report the information required under chapter 61 with respect to account holders of accounts that the participating FFI is required to treat as U.S. accounts and that report the information described in paragraph (d)(5)(ii) of this section with respect to each U.S. account shall be treated as having satisfied the reporting requirements described in paragraph (d)(2)(i) of this section with respect to accounts that the participating FFI is required to treat as U.S. accounts.

(B) *Special reporting rules for U.S. branches.* A U.S. branch of a participating FFI shall be treated as having satisfied the reporting requirements described in paragraph (d)(2)(i) of this section if it reports under—

(*1*) Chapter 61 with respect to account holders that are U.S. non-exempt recipients;

(*2*) Chapter 61 with respect to persons subject to withholding under section 3406;

(*3*) Section 1.1472–1(e) with respect to substantial U.S. owners of foreign entities that are NFFEs, and;

(*4*) Section 1.1474–1(i) with respect to specified U.S. persons that are direct or indirect owners of owner-documented FFIs.

(iv) *Accounts maintained for owner-documented FFIs.* A participating FFI that maintains an account held by an FFI that it has identified as an owner-documented FFI under § 1.1471–3(d)(7) shall report the information described in paragraph (d)(3)(iii) or (d)(5)(ii) of this section with respect to each direct or indirect owner of the owner-documented FFI that is a specified U.S. person.

(3) *Reporting of accounts under section 1471(c)(1)*—(i) *In general.* The participating FFI that is responsible for reporting an account that it is required to treat as a U.S. account under paragraph (d)(2)(ii) of this section shall be required to report such account under this paragraph (d)(3) for each calendar year unless it elects to report its U.S. accounts under paragraph (d)(5) of this section.

(ii) *Accounts held by specified U.S. persons.* In the case of an account described in paragraph (d)(3)(i) of this section that is held by one or more specified U.S. persons, a participating FFI is required to report the following information under this paragraph (d)(3)—

(A) The name, address, and TIN of each account holder that is a specified U.S. person;

(B) The account number;

(C) The account balance or value of the account;

(D) The payments made with respect to the account, as described in paragraph (d)(4)(iv) of this section, during the calendar year; and

(E) Such other information as is otherwise required to be reported under this paragraph (d)(3) or in the form described in paragraph (d)(3)(v) of this section and its accompanying instructions.

(iii) *Accounts held by U.S. owned foreign entities.* In the case of an account described in paragraph (d)(3)(i) that is held by an NFFE that is a U.S. owned foreign entity, a participating FFI is required to report under this paragraph (d)(3)(iii)—

(A) The name, address, and TIN (if any) of the U.S. owned foreign entity;

(B) The name, address and TIN of each substantial U.S. owner of such entity;

(C) The account number;

(D) The account balance or value; and

(E) The payments made with respect to the account, as described in paragraph (d)(4)(iv) of this section, during the calendar year.

(iv) *Branch reporting.* Except in the case of a branch that reports separately under paragraph (d)(2)(ii)(C) of this section, a participating FFI that reports the information described in paragraphs (d)(3)(ii) and (iii) of this section shall also report the jurisdiction of the branch that maintains the U.S. account being reported.

(v) *Form for reporting U.S. accounts under section 1471(c)(1).* The information described in paragraphs (d)(3)(ii) and (iii) of this section shall be reported with respect to each account subject to reporting under paragraph (d)(3)(i) of this section maintained at any time during a calendar year on the form provided by the IRS for such purposes. This form shall be filed in accordance with its requirements and its accompanying instructions.

(vi) *Time and manner of filing.* Except as provided in paragraph (d)(7)(v)(B) of this section, the form described in paragraph (d)(3)(v) of this section shall be filed electronically with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates. See the accompanying instructions to this form for electronic filing instructions.

(vii) *Extensions in filing.* The IRS shall grant an automatic 90-day extension of time in which to file the form described in paragraph (d)(3)(v) of this section. Form 8809, *Request for Extension of Time to File Information Returns,* (or such other form as the IRS may prescribe) must be used to request such extension of time and must be filed no later than the due date of the form described in paragraph (d)(3)(v) of this section. Under certain hardship conditions, the IRS may grant an additional 90-day extension. A request for extension due to hardship must contain a statement of the reasons for requesting the extension and such other information as the forms or instructions may require.

(4) *Descriptions applicable to reporting requirements of § 1.1471–4(d)(3)*—(i) *Address.* The address to be reported with respect to an account held by a specified U.S. person is the residence address recorded by the participating FFI for the account holder or, if no residence address is associated with the account holder, the address for the account used for mailing or for other purposes by the participating FFI. In the case of an account held by a U.S. owned foreign entity, the addresses to be reported are the addresses of both the U.S. owned foreign entity and each substantial U.S. owner of such entity.

(ii) *Account number.* The account number to be reported with respect to an account is the identifying number assigned by the participating FFI for purposes other than to satisfy the reporting requirements of this paragraph (d), or, if no such number is assigned to the account, a unique serial number or other number such participating FFI assigns to the financial account for purposes of reporting under paragraph (d)(3) of this section that distinguishes the account from other accounts maintained by such institution.

(iii) *Account balance or value*—(A) *In general.* Except as otherwise provided in this paragraph (d)(4)(iii)(A) and subject to the reporting rules described in paragraph (d)(7) of this section, the participating FFI shall report the balance or value of the account as of the end of the calendar year, as determined for purposes of reporting to the account holder or, in the case of a U.S. account that is an interest in an entity described in § 1.1471–5(e)(1)(iii), as determined for the purpose that requires the most frequent determination of value. Notwithstanding the previous sentence, the balance or value of the account is not to be reduced by any liabilities or obligations incurred by an account holder with respect to the account or any of the assets held in the account and is not to be reduced by any fees, penalties or other charges to which the account holder is liable for terminating, transferring, surrendering, liquidating, or withdrawing cash from the account. See § 1.1473–1(b)(3) for rules regarding the valuation of trust interests that also apply under this paragraph (d)(4)(iii)(A) for reporting certain interests in trusts that are U.S. accounts.

(B) *Currency translation of account balance or value.* The account balance or value of an account may be reported in U.S. dollars or in the currency in which the account is denominated. In the case of an account denominated in a foreign currency, if the participating FFI elects to report account balances or values in the currency in which the account is denominated, it is required to identify the currency in which the account is reported. If the participating FFI elects to report such an account in U.S. dollars, the participating FFI must calculate the account balance or value of the account by applying a spot rate determined under § 1.988–1(d) to translate such balance or value into the U.S. dollar. The spot rate must be determined as of the last day of the calendar year or, if the account was closed during such calendar year, the closure date of the account.

(iv) *Payments made with respect to account*—(A) *Depository accounts.* The payments made during a calendar year with respect to an account described in § 1.1471–5(b)(1)(i) consist of the aggregate gross amount of interest paid or credited to the account during the year.

(B) *Custodial accounts.* The payments made during a calendar year with respect to an account described in § 1.1471–5(b)(1)(ii) consist of—

(*1*) The aggregate gross amount of dividends paid or credited to the account during the calendar year;

(*2*) The aggregate gross amount of interest paid or credited to the account during the calendar year;

(*3*) The gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year with respect to which the FFI acted as a custodian, broker, nominee, or otherwise as an agent for the account holder; and

(*4*) The aggregate gross amount of all other income paid or credited to the account during the calendar year.

(C) *Other accounts.* In the case of an account described in § 1.1471–5(b)(1)(iii) or (iv) that is a U.S. account, the payments made during the calendar year with respect to such account are the gross amounts paid or credited to the account holder during the calendar year, including the aggregate amount of redemption payments made to the account holder during the calendar year.

(D) *Transfers and closings of deposit, custodial, insurance, and annuity*

financial accounts. In the case of an account closed or transferred in its entirety by an account holder during a calendar year that is a financial account described in § 1.1471–5(b)(1)(i), (ii), or (iv) and that the participating FFI is required to treat as a U.S. account, the participating FFI shall report the account as closed or transferred and the payments made with respect to the account shall be—

(1) the payments and income paid or credited to the account that are described in paragraph (d)(4)(iv)(A) or (B) of this section for the calendar year until the date of transfer or closure, and

(2) the amount or value withdrawn or transferred from the account in connection with the closure or transfer of the account.

(E) *Amount and characterization of payments subject to reporting.* For purposes of reporting under paragraph (d)(3) of this section, the amount and characterization of payments made with respect to an account may be determined under the same principles that the participating FFI uses to report information on its resident account holders to the tax administration of the jurisdiction in which the FFI (or branch thereof) is located. Thus, the amount and characterization of items of income described in paragraphs (d)(4)(iv)(A), (B), and (C) need not be determined in accordance with U.S. Federal income tax principles. If any of the types of payments described in paragraph (d)(4)(iv) of this section are not reported to the tax administration of the jurisdiction in which the participating FFI (or branch thereof) is located, such amounts may be determined in the same manner as is used by the participating FFI for purposes of reporting to the account holder. If any of the types of payments described in this paragraph (d)(4)(iv) is neither reported to the tax administration of the jurisdiction in which the FFI (or branch thereof) is located nor reported to the account holder for the year for which reporting is required under paragraph (d) of this section, such item must be determined and reported either in accordance with U.S. Federal tax principles or in accordance with any reasonable method of reporting that is consistent with the accounting principles generally applied by the participating FFI. Once a participating FFI (or branch thereof) has applied a method to determine such amounts, it must apply such method consistently for all account holders and for all subsequent years unless the Commissioner consents to a change in such method. Consent will be automatically granted for a change to rely on U.S. Federal income tax principles to determine such amounts.

(F) *Currency translation.* Payments described in this paragraph (d)(4)(iv) may be reported in the currency in which the payment is denominated or in U.S. dollars. In the case of a payment denominated in a foreign currency, if the participating FFI elects to report the payments in the currency in which the payment is denominated, it is required to identify the currency in which the account is reported. If such a payment is reported in U.S. dollars, the participating FFI must calculate the amount by applying a spot rate determined under § 1.988–1(d) to translate such payment into the U.S. dollar equivalent amount. The spot rate must be determined as of the last day of the calendar year for which the account is being reported.

(v) *Record retention requirements.* If a participating FFI retains copies of account statements with respect to holders of U.S. accounts in the ordinary course of its business, such statements must be provided to the IRS within 30 days of a request for such statement to the extent they have been retained under such business procedures at the time of the request. A participating FFI is required to retain for six years copies of account statements that summarize the activity in the account for each calendar year for which the account is required to be reported under paragraph (d)(3) of this section and is required to provide such copies to the IRS within 30 days of a request for such statements.

(5) *Election to perform reporting under section 1471(c)(2)*—(i) *In general.* Except as otherwise provided in this paragraph (d)(5), a participating FFI may elect under section 1471(c)(2) and this paragraph (d)(5) to report with respect to payments to accounts that it is required to treat as U.S. accounts under sections 6041, 6042, 6045, and 6049 as if such participating FFI were a U.S. person and each holder of a U.S. account that is a specified U.S. person or a U.S. owned foreign entity were a payee who is an individual and citizen of the United States. This election does not apply to cash value insurance or annuity contracts that are financial accounts described in § 1.1471–5(b)(1)(iv) and that would otherwise be subject to the reporting requirements of section 6047. If a participating FFI makes such an election, the FFI is required to report the information required under this paragraph (d)(5) with respect to each U.S. account, regardless of whether the account holder of such account qualifies as a recipient exempt from reporting by a payor or middleman under sections 6041, 6042, 6045, or 6049, including the reporting of payments made to such U.S. account of amounts that are subject to reporting under any of these sections. A participating FFI that elects to report a U.S. account under the election described in this paragraph (d)(5) is not required to report the information described in paragraph (d)(3) with respect to the account.

(ii) *Information and accounts to be reported.* In addition to the information otherwise required to be reported under sections 6041, 6042, 6045, and 6049, including the reporting of payments made to such U.S. account subject to reporting under the applicable section, a participating FFI that elects to report under this paragraph (d)(5) must report with respect to each account that it is required to treat as a U.S. account—

(A) In the case of an account holder that is a specified U.S. person:

(*1*) The name, address, and TIN of the account holder; and

(*2*) The account number; and

(B) In the case of an account holder that is a U.S. owned foreign entity that is an NFFE—

(*1*) The name, address, and TIN (if any) of such entity;

(*2*) The name, address, and TIN of each substantial U.S. owner of such entity; and

(*3*) The account number.

(iii) *Branch reporting.* Except in the case of a branch that reports separately under paragraph (d)(2)(ii)(B) of this section, a participating FFI that reports the information described in paragraph (d)(5)(ii) of this section shall also report the jurisdiction of the branch that maintains the U.S. account being reported.

(iv) *Time and manner of making the election.* A participating FFI (or one or more branches of the participating FFI) may make the election described in this paragraph (d)(5) in accordance with procedures established by the IRS for such election.

(v) *Revocation of election.* A participating FFI may revoke the election described in paragraph (d)(5)(i) (as a whole or with regard to any of its branches or affiliates) by reporting the information described in paragraph (d)(3) on the next reporting date following the calendar year on which the election is revoked.

(vi) *Filing of information under election.* The information required to be reported under the election described in this paragraph (d)(5) shall be filed with the IRS and issued to the account holder in the time and manner prescribed in sections 6041, 6042, 6045 and 6049 and in accordance with the forms referenced therein and their accompanying

instructions provided by the IRS for reporting under each of these sections.

(6) *Reporting on recalcitrant account holders*—(i) *In general.* Except as otherwise provided under paragraph (d)(7) of this section, a participating FFI, as part of its reporting responsibilities under its FFI agreement, shall report to the IRS, for each calendar year, the following groups of account holders separately—

(A) The aggregate number and aggregate value of accounts held by recalcitrant account holders at the end of the calendar year, other than accounts described in paragraph (d)(6)(i)(C), that have U.S. indicia as described in paragraph (c)(4)(i)(A) of this section;

(B) The aggregate number and aggregate value of accounts held by recalcitrant account holders at the end of the calendar year, other than accounts described in paragraph (d)(6)(i)(C), that do not have U.S. indicia as described in paragraph (c)(4)(i)(A) of this section; and

(C) The aggregate number and aggregate value of accounts held by recalcitrant account holders at the end of the calendar year that are dormant accounts.

(ii) *Definition of dormant account.* A dormant account is an account treated as a dormant or inactive account under applicable laws or regulations or the normal operating procedures of the participating FFI that are consistently applied for all accounts maintained by such institution in a particular jurisdiction. If neither applicable laws or regulations nor the normal operating procedures of the participating FFI maintaining the account address dormant or inactive accounts, an account will be treated as a dormant account if the account holder:

(A) Has not executed a transaction with regard to the account or any other account held by the account holder with the FFI in the past three years; and

(B) Has not replied to queries from the FFI that maintains such account regarding the account or any other account held by the account holder with the FFI in the past six years.

(iii) *End of dormancy.* An account treated as a dormant account under paragraph (d)(6)(ii) of this section ceases to be a dormant account when the account holder—

(A) Executes a transaction in the account or any other account held by the account holder with the FFI; or

(B) Replies to any query from the FFI that maintains such account regarding the account or any other account held by the account holder with the FFI; or

(C) Ceases to be treated as a dormant account under applicable laws or regulations or the participating FFI's normal operating procedures.

(iv) *Forms.* Reporting under paragraph (d)(6)(i) of this section shall be required to be made in accordance with the information reporting form provided by the IRS for this purpose and its instructions.

(v) *Time and manner of filing.* The form described in paragraph (d)(6)(iv) of this section shall be filed electronically with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates. See the accompanying instructions to this form for electronic filing instructions.

(7) *Special reporting rules with respect to the 2013 through 2015 calendar years*—(i) *In general.* A participating FFI may satisfy its reporting obligations with regard to accounts that it is required to treat as U.S. accounts maintained during 2013, 2014, and 2015 by reporting in accordance with paragraph (d)(7)(ii) or (iii) of this section.

(ii) *Information to be reported.* With respect to accounts that a participating FFI is required to report in accordance with paragraph (d)(2) of this section, the participating FFI may, instead of the information described in paragraph (d)(3)(ii) of this section, report only the following information—

(A) *Reporting with respect to the 2013 and 2014 calendar years.* With respect to accounts maintained during the 2013 and 2014 calendar years, the participating FFI may report only—

(*1*) The name, address, and TIN of each specified U.S. person who is an account holder and, in the case of any account holder that is an NFFE that is a U.S. owned foreign entity, the name, address, and TIN (if any) of such entity and each substantial U.S. owner of such entity;

(*2*) The account balance or value as of the end of the relevant calendar year, or, if the account was closed after the effective date of the FFI agreement, the balance or value of such account immediately before closure; and

(*3*) The account number of the account.

(B) *Reporting with respect to the 2015 calendar year.* With respect to the 2015 calendar year, the participating FFI may report only—

(*1*) The information described in paragraph (d)(7)(ii)(A) of this section; and

(*2*) The payments made with respect to the account except for those payments described in paragraph (d)(4)(iv)(B)(3) of this section.

(iii) *Participating FFIs that report under § 1.1471–4(d)(5).* A participating FFI that elects to report under paragraph (d)(5) of this section may report only the information described in paragraphs (d)(7)(ii)(A)(*1*) and (*3*) of this section for its 2013 and 2014 calendar years. With respect to its 2015 calendar year, a participating FFI is required to report all of the information required to be reported under paragraphs (d)(5)(i) and (ii) of this section but may exclude from such reporting amounts reportable under section 6045.

(iv) *Recalcitrant accounts.* For each account that the participating FFI is required to treat as a recalcitrant account, the participating FFI will report such account in the manner described in paragraph (d)(6) of this section, except to the extent provided in paragraph (d)(7)(v)(B) of this section.

(v) *Forms for reporting*—(A) *In general.* Except as provided in paragraph (d)(7)(v)(B) of this section, reporting under paragraph (d)(7)(ii) of this section shall be made on the forms described in paragraphs (d)(3)(v) and (d)(6)(iv) of this section, in the manner described in paragraphs (d)(3)(vi) and (d)(6)(v). Reporting under paragraph (d)(7)(iii) of this section shall be made in accordance with paragraph (d)(5)(vi) of this section.

(B) *Special determination date and timing for reporting with respect to the 2013 calendar year.* A participating FFI reporting with respect to the 2013 calendar year shall report all accounts that it is required to treat as U.S. accounts or as held by a recalcitrant account holder as of June 30, 2014. Such reporting shall be made on the forms described in paragraphs (d)(3)(v) and (d)(6)(iv) of this section, and shall be filed with the IRS on or before September 30, 2014. However, a U.S. payor (including a U.S. branch) that reports in accordance with paragraph (d)(2)(iii) of this section may report its U.S. accounts in accordance with the dates otherwise applicable to reporting under chapter 61.

(8) *Reporting requirements of QIs with respect to U.S. accounts.* [Reserved].

(9) *Reporting requirements of WPs with respect to U.S. accounts.* [Reserved].

(10) *Reporting requirements of WTs with respect to U.S. accounts.* [Reserved].

(11) *Examples.* The following examples illustrate the provisions of this paragraph (d):

Example 1. Financial institution required to report U.S. account. PFFI1, a participating FFI, issues shares of stock that are financial accounts under § 1.1471–5(b). Such shares are held in custody by PFFI2, another participating FFI, on behalf of U, a specified U.S. person that holds an account with

PFFI2. The shares of PFFI1 held by PFFI2 will not be subject to reporting by PFFI1 if PFFI1 may treat PFFI2 as a participating FFI under § 1.1471–3(d)(3). See paragraph (d)(2)(ii)(A) of this section.

Example 2. Financial institution required to report U.S. account. U, a specified U.S. person, holds shares in PFFI1, a participating FFI that invests in other financial institutions (a fund of funds). The shares of PFFI1 are financial accounts under § 1.1471–5(b)(3)(iii). PFFI1 holds shares that are also financial accounts under § 1.1471–5(b)(3)(iii) in PFFI2, another participating FFI. The shares of PFFI2 held by PFFI1 are not subject to reporting by PFFI2, if PFFI2 may treat PFFI1 as a participating FFI under § 1.1471–3(d)(3). See paragraph (d)(2)(ii)(A) of this section.

Example 3. U.S. owned foreign entity. FC, an NFFE that is a passive NFFE, holds a custodial account with PFFI1, a participating FFI. U, a specified U.S. person, owns 3% of the only class of stock of FC. Q, another specified U.S. person, owns 12% of the only class of stock of FC. U is not a substantial U.S. owner of FC. See § 1.1473–1(b). Q is a substantial U.S. owner of FC and FC identifies her as such to PFFI1. PFFI1 does not elect to report under paragraph (d)(5) of this section. PFFI1 must complete and file the reporting form described in paragraph (d)(3)(v) of this section and report the information described in paragraph (d)(3)(iii) with respect to both FC and Q. See paragraph (d)(3)(ii) of this section.

Example 4. Owner-documented FFI. DC, an FFI that is identified as an owner-documented FFI under § 1.1471–3(d)(6), holds a custodial account with PFFI1, a participating FFI. U, a specified U.S. person, owns 3% of the only class of stock of DC. Q, another specified U.S. person, owns 12% of the only class of stock of DC. Both U and Q are treated as interest holders that are specified U.S. persons (see § 1.1471–3(d)(6)) and DC identifies such owners to PFFI1 and otherwise provides to PFFI1 all of the information required to be reported with respect to DC's owners that are specified U.S. persons. PFF1 must complete and file a form described in paragraph (d)(3)(v) of this section with regard to U and Q. See paragraph (d)(3)(iii) of this section.

Example 5. Election to perform Form 1099 reporting with regard to a non-financial foreign entity. Same facts as in *Example 3,* except that PFFI1 has made the election in accordance with paragraph (d)(5) of this section. PFFI1 must complete and file the forms described in paragraph (d)(5)(vi) for FC, treating FC as if it were an individual and citizen of the United States and shall identify Q as a substantial U.S. owner of FC on such form. See paragraph (d)(5)(ii) of this section. PFFI1 shall not complete the forms described in paragraph (d)(5)(vi) with regard to U and Q.

Example 6. Election to perform Form 1099 reporting with regard to an owner-documented FFI. Same facts as in *Example 4,* except that PFFI1 has made the election in accordance with paragraph (d)(5) of this section. PFFI1 must complete and file the forms described in paragraph (d)(5)(vi) for U and Q.

(e) *Expanded affiliated group requirements*—(1) *In general.* Except as otherwise provided in paragraphs (e)(2) and (e)(3) of this section, each FFI that is a member of an expanded affiliated group must obtain the status of either a participating FFI or registered deemed-compliant FFI as a condition for any member of such group to obtain the status of either a participating FFI or registered deemed-compliant FFI. Accordingly, except as otherwise provided in published guidance, each FFI in an expanded affiliated group must submit a registration form to the IRS in such manner as the IRS may prescribe requesting an FFI agreement or registered deemed-compliant status as a condition for any member to become either a participating FFI or registered deemed-compliant FFI. Except as provided in paragraph (e)(2) of this section, each FFI that is a member of such group must also agree to all of the requirements for the status for which it applies with respect to all accounts maintained at all of its branches, offices, and divisions including, with respect to a participating FFI, the reporting of accounts that it is required to treat as U.S. accounts under paragraph (d) of this section, withholding on passthru payments under paragraph (b) of this section, and the closing of a U.S. account when the account holder does not provide within a reasonable period of time a valid and effective waiver of restrictions on reporting of such account.

(2) *Limited branches*—(i) *In general.* An FFI that otherwise satisfies the requirements for participating FFI status as described in this section and the FFI agreement will be allowed to become a participating FFI notwithstanding that one or more of its branches cannot satisfy all of the requirements of the FFI agreement if—

(A) All branches (as defined in paragraph (e)(2)(ii) of this section) that cannot satisfy all of the requirements of the FFI agreement are limited branches as described in paragraph (e)(2)(iii) of this section;

(B) The FFI maintains at least one branch that can comply with all of the requirements of a participating FFI, even if the only branch that can comply is a U.S. branch; and

(C) The FFI agrees to and complies with the conditions in paragraph (e)(2)(iv) of this section.

(ii) *Branch defined.* For purposes of this section, a branch is a unit, business, or office of an FFI that is treated as a branch under the regulatory regime of a country or is otherwise regulated under the laws of such country as separate from other offices, units, or branches of the FFI and that maintains books and records separate from the books and records of other branches of the FFI. All units, businesses, or offices of a participating FFI in a single country shall be treated as a single branch for purposes of this paragraph (e)(2). An account will be treated as maintained by a branch for purposes of this paragraph (e)(2) if the rights and obligations of the account holder and the participating FFI with regard to such account (including any assets held in the account) are governed by the laws of the country of the branch. For purposes of this section, a branch includes units, businesses, and offices of an FFI located in the country in which the FFI is created or organized.

(iii) *Limited branch defined.* A limited branch is a branch of an FFI that, under the laws of the jurisdiction as of February 15, 2012 and that apply with respect to the accounts maintained by the branch, cannot either—

(A) With respect to accounts that pursuant to this section and the FFI agreement it is required to treat as U.S. accounts, report such accounts to the IRS as described in paragraph (d) of this section, close such accounts within a reasonable period of time, or transfer such accounts to a branch of the FFI, a participating FFI member of the expanded affiliated group of the FFI, or another participating FFI that may so report; or

(B) With respect to recalcitrant account holders and accounts held by nonparticipating FFIs, withhold with respect to each such account as required under paragraph (b) of this section, block each such account (as defined in the next sentence), close each such account within a reasonable period of time, or transfer each such account to another branch of the FFI or a participating FFI member of the expanded affiliated group of the FFI that is not subject to the restrictions described in this paragraph (e)(2)(iii)(B) with respect to such account holders. For purposes of this paragraph (e)(2)(iii)(B), an account is considered blocked when the FFI prohibits the account holder from effecting any transactions with respect to an account until such time as the account is closed, transferred, or the account holder provides the documentation described in paragraph (c) of this section for the FFI to determine the U.S. or non-U.S. status of the account.

(iv) *Conditions for limited branch status.* An FFI with one or more limited branches must satisfy the following requirements when applying for participating FFI status with the IRS—

(A) Identify the relevant jurisdiction of each branch for which it seeks limited branch status;

(B) Agree that each such branch will identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain account holder documentation pertaining to those identification requirements for six years from the effective date of its FFI agreement, and report to the IRS with respect to accounts it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the branch;

(C) Agree to treat each such branch as an entity separate from its other branches for purposes of the withholding requirements described in paragraph (e)(2)(v) of this section;

(D) Agree that each such branch will not open accounts that it is required to treat as U.S. accounts or accounts held by nonparticipating FFIs, including accounts transferred from any branch of the FFI that is not a limited branch or from any member of its expanded affiliated group; and

(E) Agree that each limited branch will identify itself to withholding agents as a nonparticipating FFI (including affiliates of the FFI in the same expanded affiliated group that are withholding agents).

(v) *Withholding requirements applicable to limited branches.* A participating FFI will be required to withhold on a withholdable payment when a branch of the FFI other than the limited branch receives the payment on behalf of a limited branch of the FFI. A branch of the FFI other than a limited branch will be considered to have received a withholdable payment on behalf of a limited branch when such other branch receives a withholdable payment with respect to a security or instrument it holds on behalf of a limited branch (or its account holders). A branch of an FFI other than a limited branch will also be considered to hold a security or instrument on behalf of a limited branch when it executes a transaction with a limited branch that hedges or otherwise provides total return exposure to another transaction between such other branch and a third party that gives rise to a withholdable payment.

(vi) *Term of limited branch status.* An FFI that becomes a participating FFI with one or more limited branches will cease to be a participating FFI after December 31, 2015. A branch will cease to be a limited branch as of the beginning of the third calendar quarter following the date on which the branch is no longer prohibited from complying with the requirements of the FFI agreement. In such case, a participating FFI will retain its status as a participating FFI if it notifies the IRS, by the date such branch ceases to be a limited branch, that it will comply with the FFI agreement with respect to such branch.

(3) *Limited FFI affiliates*—(i) *In general.* An FFI will be allowed to become either a participating FFI or a registered deemed-compliant FFI notwithstanding that one or more of the FFIs in the expanded affiliated group of which the FFI is a member cannot comply with all of the provisions of an FFI agreement if each such FFI is a limited FFI under paragraph (e)(3)(ii) of this section.

(ii) *Limited FFI.* A limited FFI is a member of an expanded affiliated group that includes one or more participating FFIs that agrees to the conditions described in paragraph (e)(3)(iii) of this section to become a limited FFI and if under the laws of each jurisdiction that apply with respect to the accounts maintained by the affiliate, the affiliate cannot either—

(A) With respect to accounts that pursuant to this section it is required to treat as U.S. accounts, report such accounts to the IRS as described in paragraph (d) of this section, close such accounts within a reasonable period of time, or transfer such accounts to an affiliate or other participating FFI that may so report; or

(B) With respect to recalcitrant account holders and accounts held by nonparticipating FFIs, withhold with respect to each such account as required under paragraph (b) of this section, block each such account, close each such account within a reasonable period of time, or transfer each such account to an affiliate of the FFI that is a participating FFI. See paragraph (e)(2)(ii)(B) of this section for when an account is considered blocked.

(iii) *Conditions for limited FFI status.* An FFI that seeks to become a limited FFI must—

(A) Register as part of its expanded affiliated group's FFI agreement process for limited FFI status;

(B) Agree as part of such registration to identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain account holder documentation pertaining to those identification requirements for six years from the effective date of its registration as a limited FFI, and report with respect to accounts that it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the FFI;

(C) Agree as part of such registration that it will not open accounts that it is required to treat as U.S. accounts or accounts held by nonparticipating FFIs, including accounts transferred from any member of its expanded affiliated group; and

(D) Agree as part of such registration that it will identify itself to withholding agents as a nonparticipating FFI.

(iv) *Group member requirements.* Participating and deemed-compliant FFIs that are members of an expanded affiliated group that includes one or more limited affiliates will be required to treat such limited FFIs as nonparticipating FFIs with respect to withholdable payments made to these affiliates. A participating FFI or deemed-compliant FFI will be considered to have made a withholdable payment to a limited FFI when the limited FFI receives a payment with respect to a transaction between the limited FFI and such FFI that is in the same expanded affiliated group and such transaction hedges or otherwise provides total return exposure to another transaction between such FFI and a third party that gives rise to a withholdable payment. A participating FFI or deemed-compliant FFI will also be considered to have made a withholdable payment to an affiliate that is a limited FFI if such FFI receives a withholdable payment with respect to a security or instrument held on behalf of a limited FFI.

(v) *Period for limited FFI status.* A limited FFI will cease to be a limited FFI after December 31, 2015. An FFI will cease to be a limited FFI when it becomes a participating FFI or deemed-compliant FFI, or as of the beginning of the third calendar quarter following the date on which the FFI is no longer prohibited from complying with the requirements of the FFI agreement. In such case, participating and deemed-compliant FFIs that are members of the same expanded affiliated group will retain their status if, by the date that the FFI ceases to be a limited FFI, the FFI notifies the IRS that the FFI will comply with the FFI agreement.

(4) *Special rule for QIs.* An FFI that has in effect a qualified intermediary agreement with the IRS will be allowed to become a limited FFI notwithstanding that none of the FFIs in the expanded affiliated group of which the FFI is a member can comply with the provisions of an FFI agreement if the FFI that is a qualified intermediary meets the conditions of a limited FFI under paragraph (e)(3)(ii) of this section.

(f) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 7. Section 1.1471–5 is added to read as follows:

§ 1.1471–5 Definitions applicable to section 1471.

(a) *U.S. accounts*—(1) *In general.* This paragraph (a) defines the term *U.S. account* and describes when a person is treated as the holder of a financial account. This paragraph also provides rules for determining when an exception to U.S. account status applies for certain depositary accounts and the account aggregation requirements relevant in applying that exception.

(2) *Definition of U.S. account.* Subject to the exception described in paragraph (a)(4) of this section, a U.S. account is any financial account maintained by an FFI that is held by one or more specified U.S. persons or U.S. owned foreign entities. For a definition of the term financial account, see paragraph (b) of this section. For a definition of the term specified U.S. person, see § 1.1473–1(c). For a definition of the term U.S. owned foreign entity, see paragraph (c) of this section. For reporting requirements of participating FFIs with respect to U.S. accounts, see § 1.1471–4(d).

(3) *Account held by*—(i) *In general.* Except as otherwise provided in this paragraph (a)(3), an account is held by the person listed or identified as the holder of such account with the FFI that maintains the account. An entity is treated as holding an account regardless of whether the entity is a flow-through entity. Thus, except as otherwise provided in paragraphs (a)(3)(ii) and (iii), if a trust (including a simple or grantor trust) or an estate is listed as the holder or owner of a financial account, the financial account shall be treated as held by the trust or estate itself rather than by its owners or beneficiaries. Similarly, except as otherwise provided in this paragraph (a)(3), if a partnership is listed as the holder or owner of a financial account, the financial account shall be treated as held by the partnership itself, rather than the partners in the partnership.

(ii) *Grantor trust.* A trust shall not be treated as holding an account if a person is treated as the owner of the entire trust under sections 671 through 679. In that case, the account will be treated as held by the person who is treated as the owner of the trust under such sections. In the case of a person that is treated as the owner of a portion of the trust under sections 671 through 679—

(A) If such person is treated as owning all the assets in the account under sections 671 through 679, the account will be treated as held by such person;

(B) If such person is treated as owning a portion of the account or the assets in the account under sections 671 through 679, the account will be treated as held by both such person and the trust; and

(C) If such person is not treated as owning any portion of the account or any of the assets in the account under sections 671 through 679, the account will be treated as held by the trust.

(iii) *Financial accounts held by agents.* A person, other than a financial institution, holding a financial account for the benefit or account of another person as an agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of this section, and such other person is treated as holding the account.

(iv) *Jointly held accounts.* With respect to a jointly held account, each joint holder will be treated as holding the account for purposes of determining whether the account is a U.S. account. Thus, an account is a U.S. account if any of the holders is a specified U.S. person or a U.S. owned foreign entity and the account is not otherwise excepted from U.S. account status under paragraph (a)(4) of this section. In a case in which more than one U.S. person is a joint holder, each U.S. person will be treated as a holder of the account. See paragraph (a)(4)(ii) of this section for account aggregation rules applicable to jointly held accounts for purposes of determining the exception to U.S. account status under paragraph (a)(4)(i).

(v) *Holder of account for certain insurance contracts.* For purposes of this section, an insurance or annuity contract that is a financial account as defined in paragraph (b) of this section is treated as held by the contract holder (that is, owner) if such person can access the cash value of the contract (for example, through a loan, withdrawal, or surrender) or change a beneficiary under the contract. However, if the contract holder cannot access the cash value or change a beneficiary, then the contract is treated as held by each beneficiary under the contract. Upon the maturity of the insurance or annuity contract, when the obligation to pay the benefit under the contract becomes fixed, the beneficiary is treated as the contract holder.

(vi) *Examples.* The following examples illustrate the provisions of paragraph (a)(3) of this section:

Example 1. Account held by agent. F, a nonresident alien, holds a power of attorney from U, a specified U.S. person, that authorizes F to open, hold, and make deposits and withdrawals with respect to a depository account on behalf of U. F is listed as the holder of a depository account at a participating FFI. However, F holds the account as an agent for the benefit of U. F is not ultimately entitled to the funds in the account. Therefore, the depository account is treated as held by U and such account is a U.S. account because it is held by a specified U.S. person.

Example 2. Jointly held accounts. U, a specified U.S. person, holds a depository account in a participating FFI. The balance in the account at the end of the calendar year is $100,000. The account is jointly held with A, an individual who is a nonresident alien. Because one of the joint holders is a specified U.S person, the account is a U.S. account.

Example 3. Jointly held accounts. U, a specified U.S. person, holds a depository account in a participating FFI. The balance in the account at the end of the calendar year is $100,000. The account is jointly held with Q, a specified U.S. person. The account is a U.S. account, and both U and Q are treated as holding a U.S. account.

(4) *Exceptions to U.S. account status*—(i) *Exception for certain individual accounts of participating FFIs.* Unless a participating FFI elects under paragraph (a)(4)(iv) of this section not to have this paragraph (a)(4)(i) apply, the term U.S. account shall not include any account maintained by such financial institution during a calendar year if the conditions of paragraphs (a)(4)(i)(A), (B), and (C) of this section are met.

(A) *Depository accounts.* The condition of this paragraph (a)(4)(i)(A) is met if the account is a depository account.

(B) *$50,000 threshold.* The conditions of this paragraph (a)(4)(i)(B) are met if, with respect to each holder of such financial account, the aggregate balance or value of the financial account, and, to the extent required under paragraph (a)(4)(ii) of this section, all depository accounts held (in whole or in part) by the holder of the account does not exceed $50,000 as of the end of the calendar year or on the date the account is closed. For rules for determining the balance or value of financial accounts that apply for purposes of this paragraph (a)(4)(i), see § 1.1471–4(d)(4)(iii).

(C) *Individual account holders.* The condition of this paragraph (a)(4)(i)(C) is met if the account is held solely by one or more individuals.

(ii) *Aggregation requirements for exception.* For purposes of determining whether the aggregate balance of depository accounts held by an individual exceeds $50,000 for purposes of applying the exception in this paragraph (a)(4)(i), an FFI will be required to take into account all depository accounts maintained by the FFI, or members of its expanded affiliated group, that are held (in whole or in part) by such individual, but only to the extent that the FFI's computerized

systems link the accounts by reference to a data element such as client number or a taxpayer identification number (including a TIN), and allow account balances of such accounts to be aggregated. Each holder of a jointly held depository account will be attributed the entire balance of the joint account for purposes of applying the aggregation requirements described in this paragraph (a)(4)(ii).

(iii) *Currency translation.* To the extent that an account is denominated in a currency other than the U.S. dollar, the participating FFI must convert the dollar threshold amounts described in paragraph (a)(4)(i)(B) of this section into such currency using a spot rate determined under § 1.988–1(d). The spot rate must be determined as of the last day of the calendar year with respect to which the FFI is determining the threshold amounts.

(iv) *Election to forgo exception.* A participating FFI may elect to disregard the exception described in paragraph (a)(4)(i) of this section by reporting all U.S. accounts, including those accounts that would otherwise meet the exception described in paragraph (a)(4)(i) of this section.

(v) *Examples.* The following examples illustrate the account aggregation requirements of paragraph (a)(4)(ii) of this section:

Example 1. Aggregation rules for individual accounts. In Year 1, a U.S. resident individual, U, holds a depository account with CB, a commercial bank that is a participating FFI. The balance in U's CB account at the end of Year 1 is $35,000. In Year 1, U also holds a custodial account with CB's brokerage business. The custodial account has a $45,000 balance as of the end of Year 1. CB's retail banking and brokerage businesses share computerized information management systems that associate U's depository account and U's custodial account with U and with one another by reference to CB's internal identification number. The account balances of the accounts are automatically aggregated under such system. For purposes of applying the $50,000 threshold described in paragraph (a)(4)(i)(B) of this section, a depository account is aggregated only with other depository accounts. U's depository account is eligible for the paragraph (a)(4)(i) exception to U.S. account status, because its balance does not exceed $50,000.

Example 2. Aggregation rules for individual accounts. In Year 1, a U.S. resident individual, U, holds a depository account with Branch 1 of CB, a commercial bank that is a participating FFI. The balance in U's CB account at the end of Year 1 is $35,000. In Year 1, U also holds a depository account with Branch 2 of CB. The Branch 2 account has a $45,000 balance at the end of Year 1. CB's retail banking businesses share computerized information management systems across its branches; however, U's accounts are not associated with one another in the shared computerized information system. Because the accounts are not associated in CB's system, both accounts are eligible for the paragraph (a)(4)(i) exception to U.S. account status as neither account exceeds the $50,000 threshold described in paragraph (a)(4)(i)(B) of this section.

Example 3. Aggregation rules for individual accounts. Same facts as *Example 2,* except that both of U's depository accounts are associated with U and with one another by reference to CB's internal identification number. The system shows the account balances for both accounts, and such balances may be electronically aggregated; however, the system does not show a combined balance for the accounts. Because the balances can be aggregated under paragraph (a)(4)(ii) of this section, U is treated as holding financial accounts with CB with an aggregate balance of $80,000 for purposes of applying the $50,000 threshold described in paragraph (a)(4)(i)(B) of this section. Neither account is eligible for the paragraph (a)(4)(i) exception to U.S. account status, because they exceed, when aggregated, the $50,000 threshold described in paragraph (a)(4)(i)(B) of this section.

Example 4. Aggregation rules for preexisting joint accounts. In Year 1, a U.S. resident individual, U, holds a depository account in commercial bank CB. The balance in U's CB depository account at the end of Year 1 is $35,000. U also holds a joint depository account with her sister, A, a nonresident alien for U.S. Federal income tax purposes, with another commercial bank, CB2. The balance in the joint account at the end of Year 1 is $35,000. CB and CB2 form part of the same expanded affiliated group and both share computerized information management systems. Both U's depository account in CB and U and A's depository account in CB2 are associated with U and with one another by reference to CB's internal identification number. Under paragraph (a)(4)(ii) U is treated as having financial accounts in the CB/CB2 financial institution with an aggregate balance of $70,000, and neither account is eligible for the paragraph (a)(4)(i) exception to U.S. account status because they exceed the $50,000 threshold described in paragraph (a)(4)(i)(B) of this section.

(b) *Financial accounts*—(1) *In general.* Solely for purposes of chapter 4 of the Internal Revenue Code, the term *financial account* means—

(i) Any depository account (as defined in paragraph (b)(3)(i) of this section) maintained by a financial institution (as defined in paragraph (e)(1) of this section);

(ii) Any custodial account (as defined in paragraph (b)(3)(ii) of this section) maintained by a financial institution (as defined in paragraph (e)(1) of this section);

(iii) Any equity or debt interest (other than interests that are regularly traded on an established securities market) in a financial institution that is described in paragraph (e)(1)(iii) of this section (and is not described in paragraph (e)(1)(i), (ii), or (iv) of this section). The term also includes any equity or debt interest (other than interests that are regularly traded on an established securities market) in a financial institution that is described in paragraphs (e)(1)(i), (ii), and (iv) of this section, but only if the value of the debt or equity interest is determined, directly or indirectly, primarily by reference to assets that give rise to withholdable payments. Any equity or debt interest that constitutes a financial account under this paragraph (b)(1)(iii) with respect to any financial institution shall be treated for purposes of section 1471 as maintained by such financial institution; or

(iv) Any cash value insurance contract (as defined in paragraph (b)(3)(v) of this section) and any annuity contract issued or maintained by a financial institution (as defined in paragraph (e)(1) of this section).

(2) *Exceptions*—(i) *Certain savings accounts*—(A) *Retirement and pension accounts.* A financial account does not include an account that satisfies the conditions of paragraph (b)(2)(i)(A)(*1*) or (*2*) of this section.

(*1*) The account is held by a retirement or pension fund that meets the requirements of paragraph (f)(2)(ii) of this section.

(*2*) The account is subject to government regulation as a personal retirement account or is registered or regulated as an account for the provision of retirement or pension benefits under the laws of the country in which the FFI that maintains the account is established or in which it operates, and meets the following requirements—

(*i*) The account is tax-favored with regard to the jurisdiction in which the account is maintained;

(*ii*) All of the contributions to the account are employer, government, or employee contributions that are limited by reference to earned income under the law of the jurisdiction in which the account is maintained; and

(*iii*) Annual contributions (other than transfers from other accounts described in this paragraph (b)(2)(i)(A) or plans described in paragraph (f)(2)(ii) of this section or § 1.1471–6(f)) are limited to $50,000 or less, and limits or penalties apply by law of the jurisdiction in which the account is maintained to withdrawals made before reaching a specified retirement age and to annual contributions exceeding $50,000 (other than transfers from other accounts described in this paragraph (b)(2)(i)(A) or plans described in paragraph (f)(2)(ii) of this section or § 1.1471–6(f)).

(*B*) *Non-retirement savings accounts.* A financial account does not include an account that is tax-favored with regard to the jurisdiction in which the account is maintained, subject to government regulation as a savings vehicle for purposes other than for retirement, and the following conditions are also satisfied—

(*1*) Contributions to such account are limited by reference to earned income;

(*2*) Annual contributions are limited to $50,000 or less under the law of the jurisdiction in which the account is maintained;

(*3*) Limits or penalties apply on withdrawals made before specific criteria are met under the law of the jurisdiction in which the account is maintained; and

(*4*) Limits or penalties apply by law of the jurisdiction in which the account is maintained to contributions exceeding the limit described in paragraph (b)(2)(i)(B)(*2*) of this section.

(C) *Currency translation.* To the extent that an account is denominated in a currency other than the U.S. dollar, the participating FFI must convert the dollar threshold amounts described in paragraphs (b)(2)(i)(A)(*3*)(*i*) and (b)(2)(i)(B)(*2*) of this section into such currency using a spot rate determined under § 1.988–2(d). The spot rate must be determined as of the last day of the calendar year preceding the year in which the FFI is determining whether an account meets such threshold amount.

(D) *Rollovers.* A financial account that otherwise satisfies any of the requirements of this paragraph (b)(2)(i) will not fail to satisfy such requirements solely because such financial account may receive assets or funds transferred from one or more financial accounts that meet the requirements of any of paragraph (b)(2)(i)(A) or (B) of this section or from one or more retirement or pension funds that meet the requirements of paragraph (f)(2)(ii) of this section or § 1.1471–6(f).

(E) *Coordination with section 6038D.* The exclusions provided under paragraph (b)(2)(i) of this section shall not apply for purposes of determining whether an account or other arrangement is a financial account for purposes of section 6038D.

(F) *Account that is tax-favored.* For purposes of this paragraph (b)(2), an account is tax-favored if contributions to the account that would otherwise be subject to tax under the laws of the jurisdiction where the account is maintained are deductible or excluded from gross income of the account holder or if the taxation of investment income from the account is deferred under the laws of such jurisdiction, or both.

(ii) *Term life insurance contracts.* The term *financial account* does not include a life insurance contract, other than a contract held by a transferee for value under section 101(a)(2) (determined without regard to section 101(a)(2)(A) or (B)), if equal periodic premiums are payable annually or more frequently during the period the contract is in existence, and the amount payable upon termination of the contract prior to the death of the insured cannot exceed the aggregate premiums paid for the contract, less mortality, morbidity, and expense charges (whether actually imposed or not) for the period or periods of the contract's existence.

(iii) *Account held by exempt beneficial owner.* The term *financial account* does not include any financial account described in paragraph (b)(1) of this section that is held solely by one or more exempt beneficial owners described in § 1.1471–6 or by nonparticipating FFIs holding the account as intermediaries solely on behalf of one or more such owners.

(3) *Definitions.* The following definitions apply for purposes of chapter 4 of the Internal Revenue Code—

(i) *Depository account.* The term *depository account* means—

(A) A commercial, checking, savings, time, or thrift account, or an account which is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument; and

(B) Any amount held by an insurance company under an agreement to pay or credit interest thereon.

(ii) *Custodial account.* The term *custodial account* means an account for the benefit of another person that holds any financial instrument or contract held for investment (including, but not limited to, a depository account, a share or stock in a corporation, a note, bond, debenture, or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a nonfinancial index, a notional principal contract as defined in § 1.446–3(c), an insurance or annuity contract, and any option or other derivative instrument).

(iii) *Equity interest in certain entities.* In the case of a partnership that is a financial institution, the term *equity interest* means either a capital or profits interest in the partnership. In the case of a trust that is a financial institution, an *equity interest* means either an interest held by a person treated as an owner of all or a portion of the trust under sections 671 through 679 or a person holding a beneficial interest in the trust that is described in § 1.1473–1(b)(3).

(iv) *Regularly traded on an established securities market.* Debt or equity interests described in paragraph (b)(1)(iii) are regularly traded on an established securities market (as defined in § 1.1472–1(c)(1)(i)(C)) if—

(A) Trades in such interests are effected, other than in *de minimis* quantities, on such market or markets on at least 60 days during the prior calendar year; and

(B) The aggregate number of such interests that were traded on such market or markets during the prior calendar year was at least ten percent of the average number of such interests outstanding during the prior calendar year.

(v) *Cash value insurance contracts*—(A) *In general.* Except as otherwise provided in paragraph (b)(3)(v)(B) or (C) of this section, the term *cash value insurance contract* means an insurance contract that has a ''cash value'' (as defined in paragraphs (b)(3)(v)(B) and (C) of this section) greater than zero. A term life insurance contract described in paragraph (b)(2)(ii) is not a cash value insurance contract.

(B) *Cash value.* Except as otherwise provided in paragraph (b)(3)(v)(C), the term *cash value* means the greater of—

(*1*) The amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and

(*2*) The amount the policyholder can borrow under or with regard to the contract.

(C) *Amounts excluded from cash value.* Cash value does not include an amount payable under an insurance contract as—

(*1*) A personal injury or sickness benefit or a benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;

(*2*) A refund to the policyholder of a previously paid premium under an insurance contract (other than under a life insurance or annuity contract) due to policy cancellation, decrease in risk exposure during the effective period of the insurance contract, or arising from a redetermination of the premium due to correction of posting or other similar error; or

(*3*) A policyholder dividend (as defined in section 808 but without regard to paragraph (b)(2) of that section) provided such dividend is not a termination dividend, and relates to either a term life insurance contract described in paragraph (b)(2)(ii) of this

section or an insurance contract under which the only benefit payable is described in paragraph (b)(3)(v)(C)(*1*).

(c) *U.S. owned foreign entity*—(1) *In general.* The term *United States owned foreign entity* (or *U.S. owned foreign entity*) means any foreign entity that has one or more substantial U.S. owners (as defined in § 1.1473–1(b)). See § 1.1473–1(e) for the definition of foreign entity for purposes of chapter 4 of the Internal Revenue Code.

(2) *Owner-documented FFI treated as U.S. owned foreign entity.* An FFI that is treated as an owner-documented FFI under § 1.1471–3(d)(7) and that has one or more direct or indirect owners that are specified U.S. persons (as defined in § 1.1473–1(c)) shall be treated as a U.S. owned foreign entity by a participating FFI maintaining an account for such documented FFI for purposes of reporting with respect to its U.S. accounts as described in § 1.1471–4(d). For the requirements applicable to determining direct and indirect ownership in an entity, see § 1.1473–1(b)(2).

(d) *Definition of FFI.* The term *FFI* means any financial institution (as defined in paragraph (e) of this section) that is a foreign entity. A territory financial institution is not an FFI under this paragraph (d).

(e) *Definition of a financial institution*—(1) *In general.* Except as otherwise provided in paragraph (e)(5), the term *financial institution* means any entity that—

(i) Accepts deposits in the ordinary course of a banking or similar business (as defined in paragraph (e)(2) of this section);

(ii) Holds, as a substantial portion of its business (as defined in paragraph (e)(3) of this section), financial assets for the account of others;

(iii) Is engaged (or holding itself out as being engaged) primarily (as defined in paragraph (e)(4) of this section) in the business of investing, reinvesting, or trading in securities (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interests, commodities (as defined in section 475(e)(2)), notional principal contracts (as defined in § 1.446–3(c)), insurance or annuity contracts, or any interest (including a futures or forward contract or option) in such security, partnership interest, commodity, notional principal contract, insurance contract, or annuity contract; or

(iv) Is an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments with respect to a financial account under paragraph (b)(1) of this section.

(2) *Banking or similar business*—(i) *In general.* An entity is considered to be engaged in a banking or similar business if, in the ordinary course of its business with customers, the entity engages in one or more of the following activities—

(A) Accepts deposits of funds;

(B) Makes personal, mortgage, industrial, or other loans;

(C) Purchases, sells, discounts, or negotiates accounts receivable, installment obligations, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness;

(D) Issues letters of credit and negotiates drafts drawn thereunder;

(E) Provides trust or fiduciary services;

(F) Finances foreign exchange transactions;

(G) Enters into, purchases, or disposes of finance leases or leased assets; or

(H) Provides charge and credit card services.

(ii) *Application of section 581.* Entities engaged in a banking or similar business include, but are not limited to, entities that would qualify as banks under section 585(a)(2) (including banks as defined in section 581 and any corporation to which section 581 would apply except for the fact that it is a foreign corporation).

(iii) *Effect of local regulation.* Whether an entity is subject to the banking and credit laws of a foreign country, the United States, a State, a possession of the United States, or a subdivision thereof, or is subject to supervision and examination by agencies having regulatory oversight of banking or similar institutions, is relevant to but not necessarily determinative of whether that entity qualifies as a financial institution under section 1471(d)(5)(A). Whether an entity conducts a banking or similar business is determined based upon the character of the actual activities of such entity.

(3) *Holding financial assets as a substantial portion of its business*—(i) *Substantial portion.* An entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity's gross income during the shorter of—

(A) The three-year period ending on December 31 of the year in which the determination is made; or

(B) The period during which the entity has been in existence.

(ii) *Effect of local regulation.* Whether an entity is subject to the banking and credit, broker-dealer, fiduciary or other similar laws and regulations of the United States, a State, a possession of the United States, a political subdivision thereof, or a foreign country, or to supervision and examination by agencies having regulatory oversight of banking or other financial institutions, is relevant to but not necessarily determinative of whether that entity holds financial assets for the account of others as a substantial portion of its business.

(4) *In the business of investing, reinvesting, and trading.* An entity is engaged primarily in the business of investing, reinvesting, or trading if the entity's gross income attributable to such activities equals or exceeds 50 percent of the entity's gross income during the shorter of—

(A) The three-year period ending on December 31 of the year in which the determination is made, or

(B) The period during which the entity has been in existence.

(5) *Exclusions.* Entities described in any of paragraphs (e)(5)(i) through (v) of this section are excluded from the definition of a financial institution under paragraph (e)(1) of this section and are excepted NFFEs under § 1.1472–1(c)(1)(v).

(i) *Certain nonfinancial holding companies.* An entity is described in this paragraph (e)(5)(i) if it is a foreign entity substantially all of the activities of which is to own (in whole or in part) the outstanding stock of one or more subsidiaries that engage in trades or businesses, provided that no such subsidiary is a financial institution (as defined in this paragraph (e)). An entity is not described in this paragraph (e)(5)(i) if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes.

(ii) *Certain start-up companies.* An entity is described in this paragraph (e)(5)(ii) if it is a foreign entity that is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a financial institution. This exclusion expires 24 months after the initial organization of such entity, and after such time, the foreign entity will no longer qualify for this exception for start-up companies. An entity is not described in this paragraph (e)(5)(ii) if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then

hold interests in those companies as capital assets for investment purposes.

(iii) *Nonfinancial entities that are liquidating or emerging from reorganization or bankruptcy.* An entity is described in this paragraph (e)(5)(iii) if it is a foreign entity that was not a financial institution under this paragraph (e) in the past five years and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations as a nonfinancial entity.

(iv) *Hedging/financing centers of a nonfinancial group.* An entity is described in this paragraph (e)(5)(iv) if it is a foreign entity that primarily engages in financing and hedging transactions with or for members of its expanded affiliated group that are not financial institutions and that does not provide financing or hedging services to non-affiliates, provided that the expanded affiliated group is primarily engaged in a business other than that of a financial institution under this paragraph (e).

(v) *Section 501(c) entities.* An entity is described in this paragraph (e)(5)(v) if it is a foreign entity that is described in section 501(c).

(f) *Deemed-compliant FFIs.* The term *deemed-compliant FFI* includes a registered deemed-compliant FFI (as defined in paragraph (f)(1) of this section), a certified deemed-compliant FFI (as defined in paragraph (f)(2) of this section), and, to the extent provided in paragraph (f)(3) of this section, an owner-documented FFI (as defined in paragraph (f)(3) of this section). The term also includes any FFI that is described in guidance published in the **Federal Register** or the Internal Revenue Bulletin. A deemed-compliant FFI will be treated pursuant to section 1471(b)(2) as having met the requirements of section 1471(b).

(1) *Registered deemed-compliant FFIs.* A registered deemed-compliant FFI means an FFI described in any of paragraphs (f)(1)(i)(A) through (E) of this section that has met the procedural requirements described in paragraph (f)(1)(ii) of this section. A registered deemed-compliant FFI also includes any FFI that is deemed to comply with the requirements of section 1471(b) pursuant to an agreement between the government of the United States and a foreign government.

(i) *Registered deemed-compliant FFI categories*—(A) *Local FFIs.* An FFI is described in this paragraph (f)(1)(i)(A) if the FFI meets the requirements of paragraphs (f)(1)(i)(A)(*1*) through (*8*).

(*1*) The FFI must be licensed and regulated under the laws of its country of organization (which must be FATF-compliant at the time the FFI registers for deemed-compliant status) as a bank or similar organization authorized to accept deposits in the ordinary course of its business, a securities broker or dealer, or a financial planner or investment adviser, but must not qualify as an FFI solely because it is an entity described in paragraph (e)(1)(iii) of this section.

(*2*) The FFI must have no fixed place of business outside its country of incorporation or organization.

(*3*) The FFI must not solicit account holders outside its country of incorporation or organization. For this purpose, an FFI will not be considered to have solicited account holders outside of its country of organization merely because it operates a Web site, provided that the Web site does not specifically state that nonresidents may hold deposit accounts with the FFI, does not advertise the availability of U.S. dollar denominated deposit accounts or other U.S. dollar denominated investments, and does not target U.S. customers.

(*4*) The FFI must be required under the tax laws of the country in which the FFI is incorporated or organized to perform either information reporting or withholding of tax with respect to accounts held by residents.

(*5*) At least 98 percent of the accounts maintained by the FFI must be held by residents (including residents that are entities) of the country in which the FFI is organized. An FFI which is organized in an EU member state may treat account holders that are residents (including corporate residents) of other EU member states as residents of the country in which the FFI is incorporated or organized for purposes of this calculation.

(*6*) On or before the date it registers as a deemed-compliant FFI, the FFI must implement policies and procedures to ensure that it does not open or maintain accounts for any specified U.S. person who is not a resident of the country in which the FFI is organized (including a U.S. person that was a resident when the account was opened but subsequently ceases to be a resident), a nonparticipating FFI, or any entity controlled or beneficially owned (as determined under the FFI's AML due diligence) by a specified U.S. person.

(*7*) With respect to each account that is held by an individual who is not a resident of the country in which the FFI is organized or by an entity, and that is opened after December 31, 2011, and prior to the date that the FFI implements the policies and procedures described in paragraph (f)(1)(i)(A)(*6*), the FFI must review those accounts in accordance with the procedures described in § 1.1471–4(c) applicable to preexisting accounts to identify any U.S. account or account held by a nonparticipating FFI, and must certify to the IRS that it did not identify any such account as a result of its review, that it has closed any such accounts that were identified, or that it agrees to withhold and report on such accounts as would be required under § 1.1471–4(b) or (d) if it were a participating FFI.

(*8*) In the case of an FFI that is a member of an expanded affiliated group, each member of the expanded affiliated group must be incorporated or organized in the same country, must meet the requirements set forth in this paragraph (f)(1)(i)(A), and must meet the procedural requirements of paragraph (f)(1)(ii) of this section.

(B) *Nonreporting members of participating FFI groups.* An FFI that is a member of a participating FFI group is described in this paragraph (f)(1)(i)(B) if it meets the requirements of paragraphs (f)(1)(i)(B)(*1*) through (*4*) of this section.

(*1*) The FFI must review its accounts that were opened prior to the date it implements the policies and procedures described in paragraph (f)(1)(i)(B)(*3*) of this section, in accordance with the procedures described in § 1.1471–4(c) applicable to preexisting accounts to identify any U.S. account or account held by a nonparticipating FFI.

(*2*) If any account described in paragraph (f)(1)(i)(B)(*1*) of this section is identified, the FFI must, within 90 days after identification of the account, enter into an FFI agreement, transfer the account to an affiliate that is a participating FFI or U.S. financial institution, or close the account.

(*3*) On or before the date it registers with the IRS pursuant to paragraph (f)(1)(ii) of this section, the FFI must implement policies and procedures to ensure that if it opens any of the accounts described in paragraph (f)(1)(i)(B)(*1*) of this section, it either transfers any such accounts to an affiliate that is a participating FFI or U.S. financial institution or becomes a participating FFI itself, in either case within 90 days of having opened the account.

(*4*) The FFI must implement policies and procedures to ensure that it identifies any account which becomes an account described in paragraph (f)(1)(i)(B)(*1*) of this section due to a change in circumstances and it either transfers such account to an affiliate that is a participating FFI or U.S. financial institution or becomes a participating FFI itself, in either case within 90 days

after the date on which the FFI first has knowledge or reason to know of the change in the account holder's chapter 4 status.

(C) *Qualified collective investment vehicles.* An FFI is described in this paragraph (f)(1)(i)(C) if it meets the requirements of paragraphs (f)(1)(i)(C)(*1*) through (*3*).

(*1*) The FFI must be an FFI solely because it is described in paragraph (e)(1)(iii) of this section, and must be regulated in its country of incorporation or organization as an investment fund.

(*2*) Each holder of record of direct debt interests in excess of $50,000 or equity interests in the FFI (for example the holders of its units or global certificates) or any other account holder of a financial account with the FFI must a be participating FFI, registered deemed-compliant FFI, U.S. person described in any of § 1.1473–1(c)(1) through (12), or exempt beneficial owner.

(*3*) In the case of an FFI that is part of an expanded affiliated group, all other FFIs in the expanded affiliated group must be either participating FFIs or registered deemed-compliant FFIs.

(D) *Restricted Funds.* An FFI is described in this paragraph (D) if it meets the requirements of paragraphs (f)(1)(i)(D)(*1*) through (*7*) of this section.

(*1*) The FFI must be an FFI solely because it is described in paragraph (e)(1)(iii) of this section, and must be regulated as an investment fund under the laws of its country of incorporation or organization (which must be FATF-compliant at the time the FFI registers for deemed-compliant status). In addition, interests in the FFI may only be sold through distributors described in paragraph (f)(1)(i)(D)(*2*) of this section or redeemed directly by the restricted fund.

(*2*) Each distributor of the FFI's interests must be a participating FFI, a registered deemed-compliant FFI, a nonregistering local bank described in paragraph (f)(2)(i) of this section, or a restricted distributor described in paragraph (f)(4) of this section. For purposes of this paragraph (f)(1)(i)(D) and paragraph (f)(4) of this section, a distributor means an underwriter, broker, dealer, or other person who participates, pursuant to a contractual arrangement, in the distribution of securities.

(*3*) The FFI must ensure that each agreement that governs the distribution of its debt or equity interests prohibits sales of debt or equity interests in the FFI to U.S. persons, nonparticipating FFIs, or passive NFFEs with one or more substantial U.S. owners (other than interests which are both distributed by and held through a participating FFI), and the FFI's prospectus and all marketing materials must indicate that sales of interests in the FFI to U.S. persons, nonparticipating FFIs, or NFFEs with one or more substantial U.S. owners (other than interests which are both distributed by and held through a participating FFI) are prohibited.

(*4*) The FFI must ensure that each agreement that governs the distribution of its debt or equity interests requires the distributor to notify the FFI of a change in the distributor's chapter 4 status within 90 days of the change. The FFI must certify to the IRS that, with respect to any distributor that ceases to qualify as a participating FFI, a registered deemed-compliant FFI, a nonregistering local bank described in paragraph (f)(2)(i) of this section, or a restricted distributor described in paragraph (f)(4) of this section, the FFI will terminate its distribution agreement with the distributor within 90 days of notification of the distributor's change in status and will acquire or redeem all debt and equity interests of the FFI issued through that distributor within six months of the distributor's change in status.

(*5*) With respect to any of the FFI's preexisting direct accounts (that is, accounts that are held directly by the ultimate investors), the FFI must review those accounts in accordance with the procedures described in § 1.1471–4(c) applicable to preexisting accounts to identify any U.S. account or account held by a nonparticipating FFI. Notwithstanding the previous sentence, the FFI will not be required to review the account of any individual investor that purchased its interest at a time when all of the FFI's distribution agreements and its prospectus contained an explicit prohibition of the issuance of shares to U.S. entities and U.S. resident individuals. The FFI will be required to certify to the IRS either that it did not identify any such account as a result of its review or, if any such accounts were identified, that the FFI will either redeem any such account, or will withhold and report on such accounts as would be required under § 1.1471–4(b) and (d) if it were a participating FFI.

(*6*) On or before the date that it registers as a deemed-compliant FFI, the FFI must implement the policies and procedures described in § 1.1471–4(c) for identifying account holders with respect to direct account holders to ensure that it either—

(*i*) Does not open or maintain an account for any specified U.S. person, nonparticipating FFI, or passive NFFE with one or more substantial U.S. owners; or

(*ii*) Closes any account for any person described in paragraph (f)(1)(i)(D)(*6*)(*i*) within 90 days of the date that the account was opened or the date that the FFI had reason to know the account holder became a person described in paragraph (f)(1)(i)(D)(*6*)(*i*) of this section, or withholds and reports on such account as would be required under § 1.1471–4(b) and (d) if it were a participating FFI.

(*7*) For an FFI that is part of an expanded affiliated group, all other FFIs in the expanded affiliated group must be either participating FFIs or registered deemed-compliant FFIs.

(ii) *Procedural requirements for registered deemed-compliant FFIs.* A registered deemed-compliant FFI may use one or more agents to perform the necessary due diligence with respect to identifying its account holders and to take any required action associated with obtaining and maintaining its deemed-compliant status. However, the FFI remains responsible for ensuring that the requirements for its deemed-compliant status are met. Unless otherwise provided in this section, a registered deemed-compliant FFI will be required to—

(A) Have its chief compliance officer or an individual of equivalent standing with the FFI certify to the IRS in such a manner as the IRS specifies that all of the requirements for the deemed-compliant category claimed by the FFI have been satisfied as of the date the FFI registers as a deemed-compliant FFI;

(B) Obtain from the IRS a confirmation of its registration as a deemed-compliant FFI and an FFI–EIN;

(C) Agree that if it chooses to publish a passthru payment percentage, it will do so in accordance with the procedures set forth in § 1.1471–5(h);

(D) Renew its certification every three years; and

(E) Agree to notify the IRS if there is a change in circumstances which would make the FFI ineligible for the deemed-compliant status for which it has registered.

(iii) *Deemed-compliant FFI that is merged or acquired.* An FFI which has registered as a deemed-compliant FFI under paragraph (f)(1) of this section but subsequently ceases to qualify for deemed-compliant status under its existing category because it is merged into or is acquired by another participating FFI or participating FFI group, will be required to notify the IRS and must complete a new registration with the IRS as a participating FFI or a deemed-compliant FFI. A deemed-compliant FFI that becomes a participating FFI or a member of a participating FFI group as a result of a

merger or acquisition will not be required to redetermine the chapter 4 status of any account maintained by the FFI prior to the date of the merger or acquisition unless that account has a subsequent change in circumstances.

(2) *Certified deemed-compliant FFIs.* A certified deemed-compliant FFI means an FFI described in any of paragraphs (f)(2)(i) through (iv) of this section that has certified as to its status as a deemed-compliant FFI by providing a withholding agent with the documentation described in § 1.1471–3(d)(6) or (7) applicable to the relevant deemed-compliant category. A certified deemed-compliant FFI is not required to register with the IRS.

(i) *Nonregistering local bank.* An FFI is described in this paragraph (f)(2)(i) if the FFI meets the requirements of paragraphs (f)(2)(i)(A) through (F).

(A) The FFI must operate and be licensed solely as a bank (within the meaning of section 581, determined as if the FFI were incorporated in the United States) in its country of incorporation or organization and engage primarily in the business of making loans and taking deposits from unrelated retail customers.

(B) The FFI must be licensed to conduct business in its country of incorporation or organization and must have no fixed place of business outside such country.

(C) The FFI must not solicit account holders outside its country of organization. For this purpose, an FFI will not be considered to have solicited account holders outside of its country of organization merely because it operates a Web site, provided that the Web site does not specifically state that nonresidents may hold deposit accounts with the FFI, advertise the availability of U.S. dollar denominated deposit accounts or other investments, or target U.S. customers.

(D) The FFI must have no more than $175 million in assets on its balance sheet and, if the FFI is a member of an expanded affiliated group, the group may have no more than $500 million in total assets on its consolidated or combined balance sheets.

(E) The FFI must be required under the tax laws of the country in which the FFI is organized to perform either information reporting or withholding of tax with respect to resident accounts. An FFI that is not subject to such information reporting or withholding requirements will be considered to meet this requirement if all of the accounts maintained by the FFI have a value or account balance of $50,000 or less, taking into account the account aggregation rules set forth in § 1.1471–4(c)(4).

(F) With respect to an FFI that is part of an expanded affiliated group, each FFI in the expanded affiliated group must be incorporated or organized in the same country and must meet the requirements set forth in this paragraph (f)(2)(i).

(ii) *Retirement funds*—(A) *Requirements.* An FFI is described in this paragraph (f)(2)(ii) if the FFI is organized for the provision of retirement or pension benefits under the law of the country in which it is established or in which it operates and meets the requirements described in paragraph (f)(2)(ii)(A)(*1*) or (*2*).

(*1*) An FFI meets the requirements of this paragraph (f)(2)(ii)(A)(*1*) if—

(*i*) All contributions to the FFI (other than transfers of assets from accounts described in paragraph (b)(2)(i)(A) of this section or other plans described in this paragraph (f)(2)(ii) or § 1.1471–6(f)) are employer, government, or employee contributions that are limited by reference to earned income;

(*ii*) No single beneficiary has a right to more than five percent of the FFI's assets; and

(*iii*) Contributions to the FFI that would otherwise be subject to tax under the laws of the jurisdiction where the FFI is established or operates are deductible or excluded from gross income of the beneficiary, the taxation of investment income attributable to the beneficiary is deferred under the laws of such jurisdiction, or 50 percent or more of the total contributions to the FFI (other than transfers of assets from other plans described in this paragraph (f)(2)(ii) or § 1.1471–6(f)) are from the government and the employer;

(*2*) An FFI meets the requirements of this paragraph (f)(2)(ii)(A)(*2*) if—

(*i*) The FFI has fewer than 20 participants;

(*ii*) The FFI is sponsored by an employer that is not an FFI described in paragraph (e)(1)(iii) of this section or passive NFFE;

(*iii*) Contributions to the FFI (other than transfers of assets from other plans described in paragraph (f)(2)(ii) of this section, or § 1.1471–6(f)) are limited by reference to earned income;

(*iv*) Participants that are not residents of the country in which the FFI is organized are not entitled to more than 20 percent of the FFI's assets; and

(*v*) No participant that is not a resident of the country in which the FFI is organized is entitled to more than $250,000 of the FFI's assets.

(B) *Example.*

Example 1. FC, a State F foreign corporation, instituted a retirement plan for its current and former employees. The plan is organized under State F law for the provision of retirement or pension benefits and contributions to the plan are excluded from beneficiaries' income under State F law. The only contributions allowed to be made to the plan are contributions that FC's employees make based on a percentage of their compensation income, and such contributions (as well as earnings on such contributions) are credited to the employee's account. FC does not make contributions to the plan. Retirement benefits will reflect the amounts credited to the individual accounts. No single beneficiary is entitled to more than 5% of the trust's assets. The plan meets the requirements of paragraph (f)(2)(ii)(A)(*1*) of this section because contributions are limited by reference to earned income, all contributions to the plan are employee contributions, no single beneficiary has a right to more than 5% of the plan's assets, and contributions to the plan are excluded from the gross income of the beneficiaries.

(iii) *Non-profit organizations.* An FFI is described in this paragraph (f)(2)(iii) if the FFI meets the following requirements:

(*1*) The FFI is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural or educational purposes;

(*2*) The FFI is exempt from income tax in its country of residence;

(*3*) The FFI has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

(*4*) The applicable laws of the FFI's country of residence or the FFI's formation documents do not permit any income or assets of the FFI to be distributed to, or applied for the benefit of, a private person or noncharitable FFI other than pursuant to the conduct of the FFI's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the FFI has purchased; and

(*5*) The applicable laws of the FFI's country of residence or the FFI's formation documents require that, upon the FFI's liquidation or dissolution, all of its assets be distributed to an entity that meets the requirements of § 1.1471–6(b) or another organization that meets the requirements of this paragraph (f)(2)(iii), or escheat to the government of the FFI's country of residence or any political subdivision thereof.

(iv) *FFIs with only low-value accounts.* An FFI is described in this paragraph (f)(2)(iv) if the FFI meets the requirements of paragraphs (f)(2)(iv)(A) through (C) of this section.

(A) The FFI must be an FFI only because it is described in paragraphs (e)(1)(i) and/or (ii) of this section.

(B) No financial account maintained by the FFI (or, in the case of an FFI that is a member of an expanded affiliated group, by any member of the expanded affiliated group) has a balance or value in excess of $50,000. The balance or value of a financial account shall be determined by applying the rules described in paragraph (a)(4)(i) of this section, substituting the term *financial account* for the term *depository account* and the term *person* for the term *individual.*

(C) The FFI must have no more than $50,000,000 in assets on its balance sheet as of the end of its most recent accounting year. In the case of an FFI that is a member of an expanded affiliated group, the entire expanded affiliated group must have no more than $50,000,000 in assets on its consolidated or combined balance sheet as of the end of its most recent accounting year.

(3) *Owner-documented FFIs*—(i) *In general.* An FFI that meets the requirements of this paragraph (f)(3) is treated as a deemed-compliant FFI only with respect to payments received by and accounts held with a designated withholding agent. A designated withholding agent is a withholding agent that agrees to undertake the additional due diligence and reporting required under paragraphs (f)(3)(ii)(D) and (E) of this section in order to treat the FFI as an owner-documented FFI. An FFI meeting the requirements of this paragraph (f)(3) will only be treated as a deemed-compliant FFI with respect to a payment or account for which it does not act as an intermediary.

(ii) *Requirements of owner-documented FFI status.* An FFI will be treated as meeting the requirements of this paragraph (f)(3) only if it meets all of the following requirements—

(A) The FFI is not described in paragraph (e)(1)(i), (ii), or (iv) of this section;

(B) The FFI must not be affiliated with any other FFI described in paragraph (e)(1)(i), (ii), or (iv) of this section;

(C) The FFI must not maintain a financial account for any nonparticipating FFI or issue debt which constitutes a financial account to any person in excess of $50,000;

(D) The FFI must provide the designated withholding agent (that is either a U.S. financial institution or a participating FFI) with all of the documentation described in § 1.1471–3(d)(7); and

(E) The withholding agent must agree to report to the IRS all of the information described in § 1.1474–1(i) with respect to any of the owner-documented FFI's direct or indirect owners that are specified U.S. persons.

(4) *Definition of a restricted distributor.* An entity is a restricted distributor for purposes of paragraph (f)(1)(D) of this section if it operates as a distributor with respect to debt or equity interests in an FFI and satisfies paragraphs (f)(4)(i) through (viii) of this section.

(i) The distributor must provide investment services to at least 30 unrelated customers and no more than half of the distributor's customers can be related persons.

(ii) The distributor must be required to perform AML due diligence procedures under the anti-money laundering laws of its country of organization (which must be FATF-compliant).

(iii) The distributor must operate solely in its country of incorporation or organization, must not have a fixed place of business outside that country, and, if such distributor belongs to an affiliated group, must have the same country of incorporation or organization as all other members of its affiliated group.

(iv) The distributor must not solicit customers outside its country of incorporation or organization. For this purpose, an FFI will not be considered to have solicited account holders outside of its country of organization merely because it operates a Web site, provided that the Web site does not specifically state that nonresidents may acquire securities from the FFI or target U.S. customers.

(v) The distributor must have no more than $175 million in total assets under management and no more than $7,000,000 in gross revenue on its income statement for the most recent accounting year and, if the distributor belongs to an affiliated group, the entire group must have no more than $500 million in total assets under management and no more than $20 million in gross revenue for its most recent accounting year on a combined or consolidated income statement.

(vi) The distributor must provide the FFI with a valid Form W–8 indicating that the distributor satisfies the requirements to be a restricted distributor.

(vii) The agreement governing the distributor's distribution of debt or equity interests of the FFI must prohibit the distributor from distributing any securities to specified U.S. persons, passive NFFEs that have one or more substantial U.S. owners, and nonparticipating FFIs, and must require that if the distributor does distribute securities to any of the persons described in this paragraph (f)(4)(vii), that it will redeem or cancel those interests within six months and the commission paid to the distributor will be forfeited to the FFI.

(viii) With respect to sales made on or after December 31, 2011, and prior to the time the restrictions described in paragraphs (f)(1)(i)(D)(*8*)(*vii*) and (*viii*) of this section were incorporated into the distribution agreement, either the agreement governing the distributor's distribution of debt or equity interests of the relevant FFI must have contained a prohibition of the sale of securities to U.S. entities or U.S. resident individuals, or the distributor must review all accounts relating to such sales in accordance with the procedures described in § 1.1471–4(c) applicable to preexisting accounts and certify that it has redeemed all securities sold to any of the persons described in paragraph (f)(4)(vii) of this section.

(g) *Recalcitrant account holders*—(1) *Scope.* This paragraph (g) provides rules for determining when an account holder of a participating FFI is a recalcitrant account holder. Paragraph (g)(2) of this section defines the term recalcitrant account holder. Paragraphs (g)(3) and (4) of this section provide timing rules for when an account holder will begin to be treated as a recalcitrant account holder by a participating FFI and when an account holder will cease to be treated as a recalcitrant account holder by such institution. For rules for determining the holder of an account, see § 1.1471–5(a)(3). For the reporting requirements of an FFI with respect to its recalcitrant account holders, see § 1.1471–4(d)(6). For the reporting requirements of an FFI with respect to passthru payments made to recalcitrant account holders, see § 1.1474–1(d).

(2) *Recalcitrant account holder.* The term *recalcitrant account holder* means any account holder of an account maintained by a participating FFI if such account holder is not an FFI (or presumed to be an FFI), the account does not meet the exception to U.S. account status described in paragraph (a)(4) of this section (applying to depository accounts with a balance of $50,000 or less) or does not qualify for any of the exceptions from the documentation requirements described in § 1.1471–4(c)(4)(ii), (iii), or (iv) (including if the participating FFI elects not to apply such exceptions), (c)(7), or (c)(9), and—

(i) The account holder fails to comply with requests by the participating FFI for the documentation or information that is required under § 1.1471–4(c) for determining the status of such account

as a U.S. account or other than a U.S. account;

(ii) The account holder fails to provide a valid Form W–9 upon request from the participating FFI or fails to provide a correct name and TIN combination upon request from the participating FFI when the participating FFI has received notice from the IRS indicating that the name and TIN combination reported by the participating FFI (or a branch thereof in the case in which the branch reports the account separately under § 1.1471–4(d)(2)(ii)(C)) for the account holder is incorrect; or

(iii) If foreign law would prevent reporting by the participating FFI (or branch or division thereof) of the information described in § 1.1471–4(d)(3) or (5) with respect to such account, the account holder (or substantial U.S. owner of an account holder that is a U.S. owned foreign entity) fails to provide a valid and effective waiver of such law to permit such reporting.

(3) *Start of recalcitrant account holder status*—(i) *Preexisting accounts identified during the procedures described in § 1.1471–4(c) for identifying U.S. accounts*—(A) *Accounts other than high-value accounts.* Account holders of preexisting accounts that are not high-value accounts (as described in § 1.1471–4(c)(8)(i)) and that are described in paragraph (g)(2) of this section will be treated as recalcitrant account holders beginning on the date that is two years after the date on which the participating FFI's FFI agreement first entered into effect.

(B) *High-value accounts.* Account holders of preexisting accounts that are high-value accounts (as described in § 1.1471–4(c)(8)(i)) and paragraph (g)(2) of this section) will be treated as recalcitrant account holders beginning on the date that is one year after the date on which the participating FFI's FFI agreement first entered into effect.

(C) *Preexisting accounts subject to enhanced review.* An account holder that holds a preexisting account that is identified when the participating FFI applies the enhanced review described in § 1.1471–4(c)(8)(iii) with respect to a calendar year other than the year preceding the date on which the FFI's FFI agreement is first effective, and that is described in paragraph (g)(2) of this section shall be treated as a recalcitrant account holder beginning on July 1 of the year following the year at the end of which the account had a balance or value of $1,000,000 or more.

(ii) *Accounts that are not preexisting accounts and accounts requiring name/TIN correction.* An account holder of an account that is not a preexisting account and that is described in paragraph (g)(2) of this section will be treated as a recalcitrant account holder beginning 90 days after the date the account is opened by the FFI or 90 days after the participating FFI requests a correct name and TIN combination from an account holder as described in paragraph (g)(2)(ii) of this section or, in a case where the account holder is subject to backup withholding under section 3406(a)(1)(B), within the time prescribed in § 31.3406(d)–5(a).

(iii) *Accounts with changes in circumstances.* An account holder holding an account that is described in paragraph (g)(2) of this section (including a preexisting account) following a change in circumstances (including an event treated as a change in circumstances under § 1.1471–4(c)(2)(iii)) with respect to such account will be treated as a recalcitrant account holder beginning on the date that is 90 days after the date on which the participating FFI requests documentation described in § 1.1471–4(c)(3)(i) or (c)(4)(i)(B), or a valid and effective waiver described in paragraph (g)(2)(iii) of this section following such change in circumstances. For the definition of a change in circumstances with respect to an account, see § 1.1471–3(c)(6)(ii)(C).

(4) *End of recalcitrant account holder status.* An account holder that is treated as a recalcitrant account holder under paragraphs (g)(2) and (3) of this section will cease to be so treated as of the date on which the account holder is no longer described in paragraph (g)(2) of this section.

(h) *Passthru payment*—(1) *Defined.* The term *passthru payment* means any withholdable payment and any foreign passthru payment.

(2) *Foreign passthru payment.* [Reserved].

(i) *Expanded affiliated group*—(1) *Scope of paragraph.* This paragraph (i) defines the term *expanded affiliated group* for purposes of chapter 4 of the Internal Revenue Code. For the responsibilities of a participating FFI with respect to its expanded affiliated group, see § 1.1471–4(e).

(2) *Expanded affiliated group defined*—(i) *In general.* An expanded affiliated group means an affiliated group as defined in section 1504(a), determined—

(A) By substituting ''more than 50 percent'' for ''at least 80 percent each place it appears; and

(B) Without regard to paragraphs (2) and (3) of section 1504(b).

(ii) *Partnerships and other entities.* A partnership or any entity other than a corporation shall be treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section 954(d)(3) by members of such group (including any entity treated as a member of such group by reason of this sentence).

(j) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 8. Section 1.1471–6 is added to read as follows:

§ 1.1471–6 Payments beneficially owned by exempt beneficial owners.

(a) *Purpose and scope of paragraph.* This section describes classes of beneficial owners that are described in section 1471(f) (exempt beneficial owners). The classes of persons treated as exempt beneficial owners under this section are: Foreign governments, political subdivisions of a foreign government, and wholly owned instrumentalities and agencies of a foreign government; international organizations and wholly owned agencies or instrumentalities of an international organization; foreign central banks of issue; governments of United States possessions; certain foreign retirement plans; and certain entities wholly owned by one or more other exempt beneficial owners. Paragraph (b) of this section defines which foreign entities are treated as foreign governments, political subdivisions of foreign governments, and wholly owned agencies and instrumentalities of foreign governments for purposes of this section. Paragraph (c) of this section defines which entities are treated as international organizations and wholly owned agencies or instrumentalities of international organizations for purposes of this section. Paragraph (d) of this section defines which entities are treated as foreign central banks of issue for purposes of this section. Paragraph (e) defines which entities are governments of United States possessions for purposes of this section. Paragraph (f) of this section describes a class of foreign retirement plans that are treated as exempt beneficial owners. Paragraph (g) of this section describes a class of exempt beneficial owners that are wholly owned by other classes of exempt beneficial owners. See §§ 1.1471–2(a)(3)(v) and 1.1472–1(c)(1)(iv) for descriptions of the withholding exemptions provided to a withholding agent that makes a withholdable payment beneficially owned by an exempt beneficial owner. See also § 1.1471–3(d)(8) for the documentation requirements applicable to a withholding agent in determining

when a withholdable payment is beneficially owned by an exempt beneficial owner.

(b) *Foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing.* A person is described in this paragraph (b) if it is a foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing.

(1) *Definition.* Solely for purposes of this section, the term *foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing* means only the integral parts or controlled entities of a foreign sovereign.

(2) *Integral part.* Solely for purposes of paragraph (b) of this section, an *integral part* of a foreign sovereign is any person, body of persons, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a foreign country. The net earnings of the governing authority must be credited to its own account or to other accounts of the foreign sovereign, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity. All the facts and circumstances will be taken into account in determining whether an individual is acting in a private or personal capacity.

(3) *Controlled entity.* (i) Solely for purposes of paragraph (b) of this section, a *controlled entity* means an entity that is separate in form from a foreign sovereign or that otherwise constitutes a separate juridical entity, but satisfies the following requirements—

(A) It is wholly owned and controlled by a foreign sovereign directly or indirectly through one or more controlled entities;

(B) Its net earnings are credited to its own account or to other accounts of the foreign sovereign, with no portion of its income inuring to the benefit of any private person as defined in paragraph (b)(4) of this section; and

(C) Its assets vest in the foreign sovereign upon dissolution. (ii) A controlled entity also includes a partnership or any other entity owned and controlled by more than one foreign sovereign, so long as it otherwise satisfies paragraphs (b)(3)(i)(A) through (C) of this section, after replacing ''foreign sovereign'' with ''one or more foreign sovereigns'' in each place it appears therein.

(4) *Inurement to the benefit of private persons.* Solely for purposes of this paragraph (b)—

(i) Income will be presumed not to inure to the benefit of private persons if such persons (within the meaning of section 7701(a)(1)) are the intended beneficiaries of a governmental program that is carried on by the foreign sovereign and the activities of which constitute governmental functions (within the meaning of the regulations under section 892).

(ii) Income will be considered to inure to the benefit of private persons if such income benefits—

(A) Private persons through the use of a governmental entity as a conduit for personal investment, including the operation of a commercial banking business providing services to private persons; or

(B) Private persons who divert such income from its intended use by the exertion of influence or control through means explicitly or implicitly approved of by the foreign sovereign.

(5) *Commercial activities.* Solely for purposes of paragraph (b) of this section, the definition of a foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing provided in this paragraph (b) applies regardless of whether income is derived from the conduct of a commercial activity as defined in the regulations under section 892, except to the extent that such activity is conducted by a controlled entity that is a financial institution within the meaning of § 1.1471–5(e)(1)(i) or (ii).

(c) *International organization and any wholly owned agency or instrumentality thereof.* A person is described in this paragraph (c) if it is an international organization and any wholly owned agency or instrumentality thereof, as defined in section 7701(a)(18).

(d) *Foreign central bank of issue.* (1) A person is described in this paragraph (d) if it is a foreign central bank of issue. Solely for purposes of this section, the term *foreign central bank of issue* means a bank which is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. Such a bank is generally the custodian of the banking reserves of the country under whose law it is organized.

(2) A foreign central bank of issue may include an instrumentality that is separate from a foreign government, whether or not owned in whole or in part by a foreign government. For example, foreign banks organized along the lines of, and performing functions similar to, the Federal Reserve System qualify as foreign central banks of issue for purposes of this section.

(3) The Bank for International Settlements shall be treated as though it were a foreign central bank of issue for purposes of chapter 4 of the Internal Revenue Code.

(4) Solely for purposes of determining whether an entity is an exempt beneficial owner under section 1471(f), a foreign central bank is a beneficial owner with respect to income earned on collateral held by the foreign central bank in the normal course of its operations.

(e) *Governments of U.S. possessions.* A person is described in this paragraph (f) if it is a government of a United States possession. Whether a person or entity constitutes a government of a United States possession for purposes of this chapter 4 of the Internal Revenue Code will be determined by applying principles analogous to those set forth in paragraph (b) of this section.

(f) *Certain retirement funds*—(1) *Requirements.* A fund is described in this paragraph (f) if it is the beneficial owner of the payment and the fund meets the requirements described in paragraph (f)(1)(i) or (ii) of this section.

(i) A fund meets the requirements of this paragraph (f)(1)(i) if the fund—

(A) Is established in a country with which the United States has an income tax treaty in force and is generally exempt from income taxation in that country;

(B) Is operated principally to administer or provide pension or retirement benefits; and

(C) Is entitled to benefits under the treaty on income that the fund derives from U.S. sources as a resident of the other country that satisfies any applicable limitation on benefits requirement.

(ii) A fund meets the requirements of this paragraph (f)(1)(ii) if the fund—

(A) Is formed for the provision of retirement or pension benefits under the law of the country in which is established;

(B) Receives all of its contributions (other than transfers of assets from accounts described in § 1.1471–5(b)(2)(i)(A) or other plans described in § 1.1471–5(f)(2)(ii) or this paragraph (f)) from government, employer, or employee contributions that are limited by reference to earned income;

(C) Does not have a single beneficiary with a right to more than five percent of the entity's assets; and

(D) Is exempt from tax on investment income under the laws of the country in which it is established or in which it operates due to its status as a retirement or pension plan, or receives 50 percent or more of its total contributions (other than transfers of assets from accounts described in § 1.1471–5(b)(2)(i)(A) or other plans described in § 1.1471–5(f)(2)(ii) or this paragraph (f)) from the government and the employer.

(2) *Examples.* The following examples illustrate the provisions of paragraph (f) of this section:

Example 1. FP, a foreign pension fund established in Country X, is generally exempt from income taxation in Country X, and is operated principally to provide retirement benefits in such country. The U.S.-Country X income tax treaty is identical in all material respects to the 2006 U.S. model income tax convention. FP is a resident of Country X under Article 4(2)(a) and a qualified person under Article 22(2)(d) of the U.S.-Country X income tax treaty. Therefore, FP is a pension fund described in paragraph (f)(1)(i) of this section.

Example 2. FC, a State F foreign corporation formed a pension trust to provide pension benefits under the law of State and pursuant to a retirement plan for its employees and former employees. Retirement benefits under the plan are based on a percentage of the final year's salary paid to an individual, times the number of years of service. Pursuant to the plan, all contributions (calculated as a percentage of the employee's salary) are made by FC to the pension trust. The income of the trust is credited to the trust's account and subsequently used to satisfy the pension plan's obligations to retired employees. No single beneficiary is entitled to more than 5% of the trust's assets. State F does not have an income tax treaty with the United States. The trust is a foreign employer sponsored retirement plan that meets the requirements of paragraph (f)(1)(ii) of this section.

Example 3. The facts are the same as in *Example 1,* except that Country X does not have a treaty with the United States and employees are allowed to make contributions to the trust based on a percentage of compensation income, and such contributions are credited to the employee's account as well as interest accrued on such contributions. Retirement benefits will reflect the amounts credited to the individual accounts. No single beneficiary is entitled to more than 5% of the trust's assets. The pension plan is acting as an investment conduit and is not the beneficial owner of the amounts credited to the individual accounts. As a result, such plan is not a foreign employer sponsored retirement plan that meets the requirements of paragraph (f)(1) of this section. See § 1.1471–5(b)(2) for an exception for certain accounts that are part of a retirement plan that acts as an investment conduit.

(g) *Entities wholly owned by exempt beneficial owners.* A person is described in this paragraph (g) if it is an FFI that is described in § 1.1471–5(e)(1)(iii), as long as such FFI is wholly owned by one or more entities described in paragraph (b), (c), (d), (e), or (f) of this section.

(h) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 9. Section 1.1472–1 is added to read as follows:

§ 1.1472–1 Withholding on NFFEs.

(a) *Overview.* This section provides rules for withholding under section 1472. This paragraph (a) provides a general overview. Paragraph (b) of this section provides the general rule for withholding on withholdable payments made to an NFFE, including a coordinating rule for withholdable payments made by participating FFIs. Paragraph (c) of this section provides exceptions from withholding on withholdable payments made to certain NFFEs. Paragraph (d) of this section provides rules for establishing the status of a payee and when a withholding agent may treat a payee as the beneficial owner of the payment for purposes of this section. Paragraph (e) of this section provides a cross-reference to § 1.1474–1 for information reporting requirements on withholdable payments made to a payee and the income tax filing requirement of a withholding agent that withholds under this section. Paragraph (e) of this section also sets forth information reporting rules with respect to substantial U.S. owners of certain NFFEs. Paragraph (f) of this section provides the effective date of this section.

(b) *Withholdable payments made to an NFFE*—(1) *In general.* Except as otherwise provided in paragraph (b)(2) or (c) of this section, a withholding agent must withhold 30 percent of any withholdable payment made to a payee that is an NFFE unless—

(i) The beneficial owner of such payment is the NFFE or any other NFFE;

(ii) The withholding agent can, pursuant to paragraph (d) of this section, treat the beneficial owner of the payment as an NFFE that does not have any substantial U.S. owners, or as an NFFE that has identified its substantial U.S. owners; and

(iii) The withholding agent reports the information described in paragraph (e) of this section relating to any substantial U.S. owners of the beneficial owner of such payment.

(2) *Coordination of withholding requirements under section 1472 applicable to participating FFIs.* A participating FFI must comply with the provisions set forth in § 1.1471–4(b) and its FFI agreement to determine its withholding obligations under section 1472 and paragraph (b) of this section with respect to any withholding payment made to a payee that is an NFFE. See also § 1.1471–2(a)(3) for coordination of withholding requirements applicable to participating FFIs under section 1471(a) and (b).

(c) *Exceptions*—(1) *Beneficial owner that is an excepted NFFE.* A withholding agent is not required to withhold under section 1472(a) and paragraph (b) of this section on a withholdable payment (or portion thereof) if the withholding agent may treat the payment as beneficially owned by an excepted NFFE. For purposes of this paragraph (c)(1), an *excepted NFFE* means an NFFE that is one of the following—

(i) *Publicly traded corporation.* A corporation the stock of which is regularly traded on one or more established securities markets.

(A) *Regularly traded.* For purposes of this section, stock of a corporation is *regularly traded* on one or more established securities markets for a calendar year if—

(*1*) One or more classes of stock of the corporation that, in the aggregate, represent more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote and of the total value of the stock of such corporation are listed on such market or markets during the prior calendar year; and

(*2*) With respect to each class relied on to meet the more than 50 percent listing requirement of paragraph (c)(1)(i)(A)(*1*) of this section—

(*i*) Trades in each such class are effected, other than in *de minimis* quantities, on such market or markets on at least 60 days during the prior calendar year; and

(*ii*) The aggregate number of shares in each such class that are traded on such market or markets during the prior year are at least ten percent of the average number of shares outstanding in that class during the prior calendar year.

(B) *Entities treated as meeting the regularly traded requirement.* A class of stock shall be considered to meet the trading requirements of paragraph (c)(1)(i) of this section for a calendar year if the stock is traded during such year on an established securities market located in the United States and is regularly quoted by dealers making a market in the stock. A dealer makes a market in a stock only if the dealer regularly and actively offers to, and in fact does, purchase the stock from, and sell the stock to, customers who are not related persons (as defined in section 954(d)(3)) with respect to the dealer in

the ordinary course of a trade or business.

(C) *Established securities market*—(*1*) *In general.* For purposes of paragraph (c)(1)(i) of this section, the term *established securities market* means, for any calendar year—

(*i*) A foreign securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority of the foreign country in which the market is located, and has an annual value of shares traded on the exchange (or a predecessor exchange) exceeding $1 billion during each of the three calendar years immediately preceding the beginning of the calendar year in which the determination is being made;

(*ii*) A national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934 (15 USC 78f) or the Securities and Exchange Commission;

(*iii*) Any exchange designated under a Limitation on Benefits article of an income tax treaty with the United States that is currently in force; and

(*iv*) Any other exchange that the Secretary may designate in published guidance.

(*2*) *Foreign exchange with multiple tiers.* If an exchange in a foreign country has more than one tier or market level on which stock may be separately listed or traded, each such tier shall be treated as a separate exchange.

(*3*) *Discretion to determine that an exchange does not qualify as an established securities market.* The Commissioner may provide in published guidance that a securities exchange that otherwise meets the requirements of paragraph (c)(1)(i)(C) of this section does not qualify as an established securities market, if—

(*i*) The exchange does not have adequate listing, financial disclosure, or trading requirements (or does not adequately enforce such requirements); or

(*ii*) There is not clear and convincing evidence that the exchange ensures the active trading of listed stocks.

(*4*) *Computation of dollar value of stock traded.* For purposes of paragraph (c)(1)(i)(C)(*1*)(*i*) of this section, the value in U.S. dollars of shares traded during a calendar year shall be determined on the basis of the dollar value of such shares traded as reported by the International Federation of Stock Exchanges located in Paris, or, if not so reported, then by converting into U.S. dollars the aggregate value in local currency of the shares traded using an exchange rate equal to the average of the spot rates on the last day of each month of the calendar year.

(ii) *Certain affiliated entities related to a publicly traded corporation.* Any corporation that is a member of the same expanded affiliated group (as defined in § 1.1471–5(i)) as a corporation described in paragraph (c)(1)(i) of this section.

(iii) *Certain territory entities.* Any territory entity that is directly or indirectly wholly owned by one or more bona fide residents of the same U.S. possession under the laws of which the entity is organized. The term *bona fide resident of a U.S. possession* means an individual who qualifies as a bona fide resident under section 937(a) and § 1.937–1.

(iv) *Exempt beneficial owner described in § 1.1471–6(b) through (g).* An entity that is an exempt beneficial owner described in any of § 1.1471–6(b) through (g).

(v) *Active NFFEs.* Any entity that is an active NFFE. The term *active NFFE* means an NFFE if less than 50 percent of its gross income for the preceding calendar year is passive income or less than 50 percent of the assets held by the NFFE at any time during the preceding calendar year are assets that produce or are held for the production of passive income. For purposes of this paragraph (c)(1)(v), the term *passive income* means the portion of gross income that consists of—

(A) Dividends;

(B) Interest;

(C) Rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted by employees of the NFFE;

(D) Annuities;

(E) Death benefits from life insurance contracts (under U.S. or applicable law);

(F) Amounts received from or with respect to a pool of insurance contracts if the amounts received depend upon the performance of the pool;

(G) The excess of gains over losses from the sale or exchange of property that gives rise to passive income described in paragraphs (c)(1)(v)(A) through (G) of this section;

(H) The excess of gains over losses from transactions (including futures, forwards, and similar transactions) in any commodities, but not including any commodity hedging transaction described in section 954(c)(5)(A), determined by treating the corporation or partnership as a controlled foreign corporation;

(I) The excess of foreign currency gains over foreign currency losses (as defined in section 988(b)) attributable to any section 988 transaction; and

(J) Net income from notional principal contracts as defined in § 1.446–3(c)(1).

(vi) *Excepted FFIs.* Any entity described in § 1.1471–5(e)(5).

(2) *Payments made to a WP or WT.* A withholding agent is not required to withhold on a withholdable payment (or portion thereof) under section 1472(a) and paragraph (b) of this section if the withholding agent may treat the payee as an NFFE that is a WP or WT.

(d) *Rules for determining payee and beneficial owner*—(1) *In general.* For purposes of this section, except in the case of a payee that is a WP or WT, a withholding agent may treat a withholdable payment as beneficially owned by the payee as determined under § 1.1471–3. Thus, a withholding agent may treat a withholdable payment as beneficially owned by an excepted NFFE if the withholding agent can reliably associate the payment with valid documentation to determine the payee's status as an excepted NFFE under the rules of § 1.1471–3(d).

(2) *Payments made to an NFFE that is a WP or WT.* A withholding agent may treat the payee of a withholdable payment as an NFFE that is a WP or WT if the withholding agent can reliably associate the payment with valid documentation to determine the payee's status under the rules of § 1.1471–3(b)(3) and (d).

(3) *Payments made to a partner or beneficiary of an NFFE that is an NWP or NWT.* A withholding agent may treat a partner or beneficiary of an NFFE that is an NWP or NWT, respectively, as the payee of a withholdable payment under this section if the withholding agent can reliably associate the payment with a valid Form W–8 or written notification that the NFFE is a flow-through entity as described in § 1.1471–3(c)(2), including valid documentation sufficient to establish the chapter 4 status of each payee of the payment that is a partner or beneficiary, respectively, by applying the rules described in § 1.1471–3(d).

(4) *Payments made to a beneficial owner that is an NFFE.* A withholding agent may treat the beneficial owner of a withholdable payment as an NFFE that does not have any substantial U.S. owners or that has identified all of its substantial U.S. owners if it can reliably associate the payment with valid documentation identifying the beneficial owner as an NFFE that does not have any substantial U.S. owners or that has identified all of its substantial U.S. owners by applying the rules described in § 1.1471–3(d).

(5) *Absence of valid documentation.* A withholding agent that cannot reliably associate the payment with documentation as described in any of paragraphs (d)(2) through (4) of this

section must treat the payment as made to a payee in accordance with the presumption rules under § 1.1471–3(f).

(e) *Information reporting requirements*—(1) *Reporting on withholdable payments.* A withholding agent that treats a withholdable payment as made to any payee described in paragraph (d) of this section must provide information about such payee on Form 1042–S and file a withholding income tax return on Form 1042 to the extent required under § 1.1474–1(d) and (c), respectively.

(2) *Reporting on substantial U.S. owners.* A withholding agent that receives information about any substantial U.S. owners of an NFFE that is not excepted under paragraph (c) of this section must report to the IRS on a designated form, on or before March 15 of the calendar year following the year in which the withholdable payment was made, the following information—

(i) Name of the NFFE that is owned by a substantial U.S. owner;

(ii) Name of each such owner;

(iii) Each such owner's TIN;

(iv) The mailing address for each such owner; and

(v) Any other information as required by the designated form and its accompanying instructions.

(f) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 10. Section 1.1473–1 is added to read as follows:

§ 1.1473–1 Section 1473 definitions.

(a) *Definition of withholdable payment*—(1) *In general.* Except as otherwise provided in this paragraph (a), the term *withholdable payment* means—

(i) Any payment of U.S. source FDAP income (as defined in paragraph (a)(2) of this section); and

(ii) For any sales or other dispositions occurring after December 31, 2014, any gross proceeds from the sale or other disposition (as defined in paragraph (a)(3)(i)) of any property of a type which can produce interest or dividends that are U.S. source FDAP income.

(2) *U.S. source FDAP income defined*—(i) *In general*—(A) *FDAP income defined.* Except as provided in paragraph (a)(2)(i)(B) of this section, for purposes of chapter 4 of the Internal Revenue Code the term *FDAP income* means fixed or determinable annual or periodic income that is described in § 1.1441–2(b)(1) or 1.1441–2(c).

(B) *U.S. source.* The term *U.S. source FDAP income* means FDAP income, as defined in paragraph (a)(2)(i)(A) of this section, that is derived from sources within the United States as described in paragraph (a)(2)(ii) of this section, including (but not limited to) the types of income enumerated in paragraphs (a)(2)(iii) through (vi) of this section. Except as provided in paragraph (a)(4) of this section, no exception to withholding on U.S. source FDAP income applies for purposes of determining whether a payment of such income is a withholdable payment. Thus, an exclusion from an amount subject to withholding under § 1.1441–2(a) for purposes of chapter 3 or an exclusion from taxation under section 881 shall not apply for purposes of determining whether income is U.S. source FDAP income under this paragraph (a)(2)(i)(B).

(ii) *Determination of source of income*—(A) *In general.* Except as provided in paragraph (a)(2)(ii)(B) of this section, a payment is derived from sources within the United States if it is income treated as derived from sources within the United States under sections 861 through 865 and other relevant provisions of the Code. In the case of a payment of FDAP income for which the source of the payment cannot be determined at the time the payment is made, the payment shall be treated by a withholding agent as being from sources within the United States for purposes of paragraph (a)(2)(i)(B) of this section.

(B) *Special source rule for certain interest.* Interest that is described in section 861(a)(1)(A)(i) or (ii) shall be treated as U.S. source FDAP income under this paragraph (a)(2).

(iii) *Original issue discount.* For purposes of chapter 4 of the Internal Revenue Code, the rules described in § 1.1441–2(b)(3)(ii) for determining when an amount representing original issue discount is subject to withholding for chapter 3 purposes will apply to determine when original issue discount from sources within the United States is U.S. source FDAP income under this paragraph (a)(2).

(iv) *REMIC residual interests.* U.S. source FDAP income includes an amount described in § 1.1441–2(b)(5).

(v) *Withholding liability of payee that is satisfied by withholding agent.* If a withholding agent satisfies a withholding liability arising under chapter 4 of the Internal Revenue Code with respect to a withholdable payment from the withholding agent's own funds, the satisfaction of such liability shall be treated as an additional payment of U.S. source FDAP income made to the payee to the extent that the withholding agent's satisfaction of such withholding also satisfies a tax liability of the payee under section 881 or 871 with respect to the same payment, and the satisfaction of the tax liability constitutes additional income to the payee under § 1.1441–3(f) that is U.S. source FDAP income. In such a case, the amount of any additional payment treated as made by the withholding agent for purposes of this paragraph (a)(2)(v) and any tax liability resulting from such payment shall be determined under § 1.1441–3(f). See § 1.1474–6 regarding the coordination of the withholding requirements under chapters 3 and 4 in the case of a withholdable payment that is also subject to withholding under chapter 3.

(vi) *Special rule for sales of interest bearing debt obligations.* Income that is otherwise described as U.S. source FDAP income in paragraphs (a)(2)(i) through (v) of this section does not include an amount of interest accrued on the date of a sale or exchange of an interest bearing debt obligation when the sale occurs between two interest payment dates.

(vii) *Payment of U.S. source FDAP income*—(A) *Amount of payment of U.S. source FDAP income.* The amount of U.S. source FDAP income is the gross amount of the payment of such income, unreduced by any deductions or offsets. The rules described in § 1.1441–3(b)(1) shall apply to determine the amount of an interest payment on an interest-bearing obligation. In the case of a corporate distribution, the distributing corporation or intermediary shall determine the portion of the distribution that is treated as U.S. source FDAP income under this paragraph (a)(2) in the same manner as the distributing corporation or intermediary determines the portion of the distribution subject to withholding under § 1.1441–3(c). Any portion of a payment on a debt instrument or a corporate distribution that does not constitute U.S. source FDAP income under this paragraph (a)(2) solely because of a provision other than the source rules of sections 861 through 865 shall be taken into account as gross proceeds under paragraph (a)(3) of this section. For rules regarding the determination of the amount of a payment of U.S. source FDAP income under paragraph (a)(2) of this section made in a medium other than U.S. dollars, see § 1.1441–3(e). For determining the amount of a payment of a dividend equivalent, see section 871(m) and the regulations thereunder.

(B) *When payment of U.S. source FDAP income is made.* A payment is considered made when the amount would be includible in the income of the beneficial owner under the U.S. tax principles governing the cash basis method of accounting. If an FFI acts as an intermediary with respect to a

payment of U.S. source FDAP, the FFI will be treated as making a payment of such U.S. source FDAP to the person with respect to which the FFI acts as an intermediary when it pays or credits such amount to such person. For rules regarding when a payment is considered made in the case of income allocated under section 482 that apply for purposes of this paragraph (a)(2)(vii)(B), see § 1.1441–2(e)(2). The rules of § 1.1441–2(e)(3) regarding blocked income apply for purposes of this paragraph (a)(2)(vii)(B). The rules of § 1.1441–2(e)(4) regarding when a dividend is considered paid apply for purposes of this paragraph (a)(2)(vii)(B). For rules regarding when interest is considered paid if a foreign person has made an election under § 1.884–4(c)(1), see § 1.1441–2(e)(5).

(3) *Gross proceeds defined*—(i) *Sale or other disposition*—(A) *In general.* Except as otherwise provided in this paragraph (a)(3)(i), the term *sale or other disposition* means any sale, exchange, or disposition of property described in paragraph (a)(3)(ii) of this section that requires recognition of gain or loss under section 1001, without regard to whether the owner of such property is a foreign person that is not subject to U.S. Federal income tax with respect to such sale, exchange, or disposition. The term sale or other disposition includes (but is not limited to) sales of securities, redemptions of stock, retirements and redemptions of indebtedness, and entering into short sales and a closing transaction in a forward contract, option or other instrument that is otherwise a sale. Such term further includes a distribution from a corporation to the extent the distribution is a return of capital or a capital gain to the beneficial owner of the payment. Such term does not include grants or purchases of options, exercises of call options for physical delivery, or mere executions of contracts that require delivery of personal property or an interest therein. For purposes of this section only, a constructive sale under section 1259 or a mark to fair market value under section 475 or 1296 is not a sale or disposition.

(B) *Special rule for sales effected by brokers.* In the case of a sale effected by a broker (with the term ''effect'' defined in § 1.6045–1(a)(10)), a sale means a sale as defined in § 1.6045–1(a)(9) with respect to property described in paragraph (a)(3)(ii) of this section.

(C) *Special rule for gross proceeds from sales settled by clearing organization.* In the case of a clearing organization that settles sales and purchases of securities between members of such organization on a net basis, the gross proceeds from a sale or disposition are limited to the net amount paid or credited to a member's account that is associated with a sale of property described in paragraph (a)(3)(ii) of this section by such member as of the time that such transaction is settled under the settlement procedures of such organization. A clearing organization for purposes of this paragraph (a)(3)(i)(C) is an entity that is in the business of holding securities for member organizations and transferring securities among such members by credit or debit to the account of a member without the necessity of physical delivery of the securities.

(ii) *Property of a type that can produce interest or dividends that are U.S. source FDAP income*—(A) *In general.* Property is of a type that can produce interest or dividends that are U.S. source FDAP income when the property is of a type that ordinarily gives rise to the payment of interest or dividends constituting U.S. source FDAP income, regardless of whether any such payment is made during the period such property is held by the person selling or disposing of such property. Thus, for example, stock issued by a domestic corporation is property of a type that can produce dividends from sources within the United States if a dividend from such corporation would be from sources within the United States, regardless of whether the stock pays dividends at regular intervals and regardless of whether the issuer has any plans to pay dividends or has ever paid a dividend with respect to the stock.

(B) *Termination of specified notional principal contract.* In the case of a termination that requires recognition of gain or loss under section 1001 of a contract that can produce the payment of a dividend equivalent as defined in section 871(m), such contract shall be treated as property that is described in paragraph (a)(3)(ii)(A) of this section, without regard to whether the taxpayer is a foreign person subject to U.S. Federal income tax with respect to such transaction. To the extent that the proceeds from such termination include the payment of a dividend equivalent, the gross amount of such proceeds will not include the amount of such dividend equivalent.

(C) *Registered investment company distributions.* The amount of a distribution that is designated as a capital gain dividend under section 852(b)(3)(C) or 871(k)(2) is a payment of gross proceeds to the extent attributable to property described in paragraph (a)(3)(ii)(A) of this section.

(iii) *Payment of gross proceeds*—(A) *When gross proceeds are paid.* With respect to a sale that is effected by a broker that results in a payment of gross proceeds as defined under this paragraph (a)(3), the date the gross proceeds are considered paid is the date that the proceeds of such sale are credited to the account of or otherwise made available to the person entitled to the payment. In a case in which gross proceeds are paid to a financial institution or other entity acting as an intermediary for the person selling or otherwise disposing of the property, the gross proceeds are considered paid to such person on the date that the proceeds are credited to the account of or otherwise made available to such institution.

(B) *Amount of gross proceeds.* Except as otherwise provided in this paragraph (a)(3)—

(*1*) The amount of gross proceeds from a sale or other disposition means the total amount realized as a result of a sale or other disposition of property described in paragraph (a)(3)(ii) under section 1001;

(*2*) In the case of a sale effected by a broker, the amount of gross proceeds from a sale or other disposition means the total amount paid or credited to the account of the person entitled to the payment increased by any amount not so paid by reason of the repayment of margin loans. The broker may but is not required to take commissions into account with respect to the sale in determining the amount of gross proceeds;

(*3*) In the case of a corporate distribution, the amount treated as gross proceeds excludes the amount described in paragraph (a)(2)(vii)(A) of this section that is treated as U.S source FDAP income;

(*4*) In the case of a sale of an obligation described in paragraph (a)(2)(vi), gross proceeds includes any interest accrued between interest payment dates; and

(*5*) In the case of a sale, retirement, or redemption of a debt obligation, gross proceeds excludes the amount of original issue discount treated as U.S. source FDAP income under paragraph (a)(2)(iii) of this section.

(iv) *Withholding requirements on gross proceeds.* For the withholding requirements with respect to a payment constituting gross proceeds and for determining the withholding agent that is required to withhold on such payment, see § 1.1471–2(a)(2)(v).

(4) *Payments not treated as withholdable payments.* The following payments are not withholdable

payments under paragraph (a)(1) of this section—

(i) *Certain short-term obligations.* A payment of interest or original issue discount on short-term obligations described in section 871(g)(1)(B)(i) or 881(f).

(ii) *Effectively connected income.* Any item of income that is taken into account under section 871(b)(1) or 882(a)(1) for the taxable year. An item of income is taken into account under section 871(b)(1) or 882(a)(1) when the income is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States and is includible in the beneficial owner's gross income for the taxable year. An amount of income shall not be treated as taken into account under section 871(b)(1) or 882(a)(1) if the income is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States and the beneficial owner claims an exception from tax under an income tax treaty because the income is not attributable to a permanent establishment in the United States.

(iii) *Ordinary course of business payments.* Payments made in the ordinary course of the withholding agent's business for nonfinancial services, goods, and the use of property. Such payments include ordinary course payments for nonfinancial services, wages, office and equipment leases, software licenses, transportation, freight, gambling winnings, awards, prizes, scholarships, and interest on outstanding accounts payable arising from the acquisition of nonfinancial services, goods, and other tangible property. Ordinary course payments do not include dividends; any interest other than interest described in the preceding sentence; dividend equivalent payments with respect to which the withholding agent acts as custodian, intermediary, or agent; or bank or brokerage fees.

(iv) *Gross proceeds from sales of excluded property.* Gross proceeds from the sale or other disposition of any property that can produce U.S. source FDAP income excluded from the definition of withholdable payment under paragraphs (a)(4)(i) through (iii) of this section.

(v) *Fractional Shares.* Sales described in § 1.6045–1(c)(3)(ix).

(5) *Special payment rules for flow-through entities, complex trusts, and estates*—(i) *In general.* This paragraph (a)(5) provides special rules for a flow-through entity, complex trust, or estate to determine when such entity must treat U.S. source FDAP income as having been paid by such entity to its partners, owners, or beneficiaries (as applicable depending on the type of entity).

(ii) *Partnerships.* An amount of U.S. source FDAP income is treated as being paid to a partner under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441–5(b)(2)(i)(A).

(iii) *Simple trusts.* An amount of U.S. source FDAP income is treated as being paid to a beneficiary of a simple trust under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441–5(b)(2)(ii).

(iv) *Complex trusts and estates.* An amount of U.S. source FDAP income is treated as paid to a beneficiary of a complex trust or estate under rules similar to the rules prescribing when withholding is required for chapter 3 purposes as described in § 1.1441–5(b)(2)(iii).

(v) *Grantor trusts.* In a case in which an amount of U.S. source FDAP income is paid to a grantor trust, a person treated as an owner of such trust is treated as having been paid such income by the trust at the time it is received by or credited to the trust.

(vi) *Special rule for NWP or NWT.* In the case of a partnership, simple trust, or complex trust that is a NWP or NWT, the rules described in paragraphs 5(ii) and (iii) shall not apply, and U.S. source FDAP income is treated as paid to the partner or beneficiary at the time the income is paid to the partnership or trust, respectively.

(vii) Special rule for determining when gross proceeds are treated as paid to partner, owner, or beneficiary of a flow through entity. [Reserved].

(6) *Reporting of withholdable payments.* See § 1.1474–1(c) and (d) for a description of the income tax return and information reporting requirements applicable to a withholding agent that has made a withholdable payment.

(7) *Example. Satisfaction of payee's chapter 4 liability by withholding agent.* FFI1 is entitled to receive a payment of $100 of U.S. source interest from withholding agent, WA. The payment is subject to withholding under chapter 4 of the Internal Revenue Code, but is not subject to withholding under section 1442, and FFI1 has no substantive tax liability under section 881 with respect to this payment. A pays the full $100 to FFI1 and, after the date of payment, pays the $30 of tax due under chapter 4 to the IRS from its own funds. Because no underlying tax liability of FFI1 is satisfied, and further because WA and FFI1 did not execute any agreement for WA to pay this tax and WA did not have an obligation to pay this tax apart from the requirements of chapter 4, WA's payment of the tax does not give rise to a deemed payment of U.S. source FDAP income to FFI1 under paragraph (a)(2)(v) of this section. Thus, WA is not required to pay any additional tax with respect to this payment for purposes of chapter 4.

(b) *Substantial U.S. owner*—(1) *Definition.* The term *substantial United States owner* (or *substantial U.S. owner*) means:

(i) With respect to any foreign corporation, any specified U.S. person that owns, directly or indirectly, more than ten percent of the stock of such corporation (by vote or value);

(ii) With respect to any foreign partnership, any specified U.S. person that owns, directly or indirectly, more than ten percent of the profits interests or capital interests in such partnership; and

(iii) In the case of a trust—

(A) Any specified U.S. person treated as an owner of any portion of such trust under subpart E of Part I of subchapter J of chapter 1 (sections 671 through 679); or

(B) Any specified U.S. person that holds, directly or indirectly, more than ten percent of the beneficial interests of such trust.

(2) *Direct and indirect ownership in foreign entities.* For purposes of this paragraph (b), ownership includes direct ownership and indirect ownership by application of paragraph (b)(2)(i), (ii), or (iii) of this section.

(i) *Indirect ownership of stock.* Stock owned directly or indirectly by an entity (other than a participating FFI, a deemed-compliant FFI (excluding an owner-documented FFI), a U.S. financial institution, or an entity described in § 1.1471–6 or 1.1472–1(c)(1)) that is a corporation, partnership, or trust shall be considered as being owned proportionately by its shareholders, partners, grantors or others persons treated as owners under sections 671 through 679 of any portion of the trust that includes the stock, or beneficiaries, respectively. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(ii) *Indirect ownership in a partnership or beneficial trust interest.* A capital or profits interest in a partnership or an ownership or beneficial trust interest (as defined in paragraph (b)(3) of this section) owned or held directly or indirectly by an entity (other than a participating FFI, a deemed-compliant FFI, a U.S. financial institution, or an entity described in § 1.1471–6 or 1.1472–1(c)(1)) that is a corporation, partnership, or trust shall be considered as being owned or held proportionately by its shareholders,

partners, grantors or others persons treated as owners under sections 671 through 679 of any portion of the trust that includes the partnership or beneficial trust interest, or beneficiaries, respectively. Partnership or beneficial trust interests considered to be owned or held by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned or held by such person.

(iii) *Indirect ownership through U.S. persons.* Attribution under these rules shall not stop with a specified U.S. person in the chain of ownership running from the foreign entity that does not meet the definition of a substantial U.S. owner to the extent that the result of further attribution would be to treat a specified U.S. person as a substantial U.S. owner.

(iv) *Ownership and holdings through options.* If any specified U.S. person holds, directly or indirectly applying the principles of paragraphs (b)(2)(i), (ii), and (iii) of this section, an option to acquire stock in a corporation or an option to acquire a capital or profits interest in a partnership or an ownership or beneficial interest in a trust, such option shall be considered as ownership of the underlying equity or other ownership interest by such person in such entity for purposes of this paragraph (b). For purposes of the preceding sentence, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock or other ownership interest described in this paragraph (b)(2)(iv).

(v) *Determination of proportionate interest.* For purposes of this paragraph (b), and except as otherwise provided in paragraph (b)(3) of this section, the determination of a person's proportionate interest in a corporation, partnership, or trust is based on all relevant facts and circumstances. In this determination, any arrangement that artificially decreases a specified U.S. person's proportionate interest in any such entity will not be recognized in determining whether such person is a substantial U.S. owner.

(3) *Beneficial trust interests*—(i) *Holding a beneficial interest*—(A) *In general.* For purposes of paragraph (b)(1)(iii)(B) of this section, a specified U.S. person will be treated as directly or indirectly holding a beneficial interest in a foreign trust if such specified U.S. person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust. Whether a person has a right to a mandatory distribution is determined taking into account all facts and circumstances.

(B) *Discretionary distribution.* A discretionary distribution is a distribution at the discretion of the trustee of such trust.

(ii) *Valuation rules for beneficial interests in foreign trusts.* If a specified U.S. person is a beneficiary of a foreign trust and may receive solely one or more discretionary distributions, the value of the specified U.S. person's interest in the foreign trust is the fair market value of the currency and other property distributed from the foreign trust to the specified U.S. person during the prior calendar year. If a specified U.S. person is a beneficiary of a foreign trust and has the right to receive solely mandatory distributions from the trust, the value of the specified U.S. person's interest in the foreign trust is determined under section 7520. If a specified U.S. person is a beneficiary of a foreign trust and has the right to receive mandatory distributions and discretionary distributions from the trust, the value of the specified U.S. person's interest in the foreign trust is the sum of the value of all of the currency or other property distributed from the trust at the discretion of the trustee during the prior calendar year to the specified U.S. person as a beneficiary and the value of the specified U.S. person's right as a beneficiary to receive mandatory distributions from the trust as determined under section 7520.

(iii) *Determining the ten percent threshold in the case of a beneficial interest in a foreign trust*—(A) *Discretionary beneficial interests.* If a specified U.S. person is a direct or indirect beneficiary of a foreign trust and may only receive a discretionary distribution, such person will be treated as holding more than ten percent of the beneficial interests in such trust if the value of the currency or other property distributed to such specified U.S. person during the prior calendar year exceeds ten percent of the value of all distributions made by such trust during that year.

(B) *Mandatory beneficial interests.* If a specified U.S. person is a direct or indirect beneficiary of a foreign trust and has the right to receive only mandatory distributions from the trust, such person will be treated as holding more than ten percent of the beneficial interests in such trust if the value of the person's interest, determined under paragraph (b)(3)(ii) of this section, exceeds ten percent of the value of all the assets held by the trust.

(C) *Mandatory and discretionary beneficial interests.* If a specified U.S. person is a beneficiary of a foreign trust and such person has the right to mandatory distributions from the trust and the opportunity for discretionary distributions from the trust, such person will be treated as holding more than ten percent of the beneficial interests in such trust if the value of the person's interest, determined under paragraph (b)(3)(ii) of this section, exceeds either ten percent of the value of all distributions made by such trust during the year or ten percent of the value of all assets of the trust.

(4) *Exception for certain beneficial interests.* A specified U.S. person with an interest described in paragraph (b)(3)(iii)(A) of this section shall only be treated as a substantial U.S. owner if the value of the currency or other property distributed to such specified U.S. person during the calendar year exceeds $5,000. A specified U.S. person described in paragraph (b)(3)(iii)(B) or (C) of this section shall only be treated as a substantial U.S. owner if the value of such person's interest, determined under paragraph (b)(3)(ii) of this section, exceeds $50,000.

(5) *Special rule for certain investment vehicles and insurance.* In the case of any financial institution described in § 1.1471–5(e)(1)(iii) or (iv), paragraphs (b)(1)(i) through (iii) of this section shall be applied by substituting ''zero percent'' for ''ten percent.''

(6) *Determination dates for substantial U.S. owners.* A foreign entity may make the determination of whether it has one or more direct or indirect substantial U.S. owners as of the last day of such entity's accounting year or as of the date on which such foreign entity provides the documentation described in § 1.1471–3(d) to the withholding agent with which the foreign entity holds an account for which such determination is required to be made.

(7) *Examples.* The following examples illustrate the provisions of paragraph (b) of this section:

Example 1. Indirect ownership. U is a specified U.S. person. U owns directly 100% of the sole class of stock of F1, a foreign corporation. F1 owns directly 90% of the sole class of stock of F2, a foreign corporation, and U owns directly the remaining 10% of the sole class of stock of F2. F2 owns directly 10% of the sole class of stock of F3, a foreign corporation, and U owns directly 3% of the sole class of stock of F3. U is treated as owning 13% of the sole class of stock of F3 for purposes of this paragraph (b), and is treated as owning 100% of the sole class of stock of F2 for purposes of this paragraph (b). U is a substantial U.S. owner of F1, F2, and F3.

Example 2. Determining the 10% threshold in the case of a beneficial interest in a foreign

trust. U, a United States citizen, holds only an interest described in paragraph (b)(3)(iii)(A) in FT1, a foreign trust. U also holds only an interest described in paragraph (b)(3)(iii)(A) in FT2, also a foreign trust, and FT2, in turn, holds only an interest described in paragraph (b)(3)(iii)(A) in FT1. U receives $25,000 from FT1 in Year 1. FT2 receives $120,000 from FT1 in Year 1 and distributes the entire amount to its beneficiaries in year 1. The distribution from FT1 is FT2's only source of income. U receives $40,000 from FT2. FT1 distributes $750,000 to all of its beneficiaries in Year 1. U's discretionary interest in FT1 does not meet the 10% threshold as determined under paragraph (b)(3)(iii)(A). See paragraph (b)(3)(ii). U's discretionary interest in FT2, however, does meet the 10% threshold as determined under paragraph (b)(3)(iii)(A).

Example 3. Determining ownership (determination date). F, a foreign corporation that is an NFFE, has a calendar year accounting year. On December 31 of Year 1, U, a specified U.S. person, owns 12% of the sole class of outstanding stock of F. In March of Year 2, F redeems a portion of U's stock and reduces U's ownership of F to 9%. In May of Year 2, F opens an account with P, a participating FFI, and delivers to P the documentation required under § 1.1471–3(d). At the time F opens its account with P, U is the only specified U.S. person that directly or indirectly owns stock in F. Because of the redemption, U's interest in F is 9% on the date F opens its account with P. F may determine whether it has a substantial U.S. owner as of the date it provides the documentation required under § 1.1471–3(d) to P, which would be the day it opens the account. As a result, F may indicate in its § 1.1471–3(d) documentation that it has no substantial U.S. owners.

(c) *Specified U.S. person.* The term *specified United States person* (or *specified U.S. person*) means any U.S. person other than—

(1) A corporation the stock of which is regularly traded on one or more established securities markets, as described in § 1.1472–1(c)(1)(i);

(2) Any corporation that is a member of the same expanded affiliated group as a corporation described in § 1.1472–1(c)(1)(i);

(3) Any organization exempt from taxation under section 501(a) or an individual retirement plan as defined in section 7701(a)(37);

(4) The United States or any wholly owned agency or instrumentality thereof;

(5) Any State, the District of Columbia, any possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;

(6) Any bank as defined in section 581;

(7) Any real estate investment trust as defined in section 856;

(8) Any regulated investment company as defined in section 851 or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–64);

(9) Any common trust fund as defined in section 584(a);

(10) Any trust that is exempt from tax under section 664(c) or is described in section 4947(a)(1);

(11) A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State; and

(12) A broker as defined in section 6045(c) and § 1.6045–1(a)(1).

(d) *Withholding agent*—(1) *In general.* Except as provided in this paragraph (d), the term *withholding agent* means any person, U.S. or foreign, in whatever capacity acting, that has the control, receipt, custody, disposal, or payment of a withholdable payment.

(2) *Participating FFIs as withholding agents.* Except as otherwise provided in the FFI agreement of a participating FFI, the term withholding agent includes a participating FFI that has the control, receipt, custody, disposal, or payment of a passthru payment (as defined in § 1.1471–5(h)). The term withholding agent also includes a registered deemed-compliant FFI to the extent that such FFI is required to withhold on a passthru payment as part of the conditions for maintaining its status as a deemed-compliant FFI under § 1.1471–5(f)(1)(ii). For the withholding requirements of a participating FFI with respect to limited branches and limited FFIs that are in the same expanded affiliated group as the participating FFI, see § 1.1471–4(b).

(3) *Grantor trusts as withholding agents.* The term withholding agent includes a grantor trust with respect to a withholdable payment or a passthru payment (in the case of a grantor trust that is a participating FFI) made to a person treated as an owner of the trust under sections 671 through 679. For purposes of determining when a payment is treated as made to such owner of a trust, see § 1.1473–1(a)(5)(v).

(4) *Deposit and return requirements.* See § 1.1474–1(a) for the requirement of any person that meets the definition of a withholding agent under this paragraph (d) to deposit any tax withheld, and § 1.1474–1(c) and (d) for the requirement to file income tax and information returns.

(5) *Multiple withholding agents.* When several persons qualify as a withholding agent with respect to a single payment, only one tax is required to be withheld and deposited. See § 1.1474–1(a). A person who, as a nominee described in § 1.6031(c)–1T, has furnished to a partnership all of the information required to be furnished under § 1.6031(c)–1T(a) shall not be treated as a withholding agent if it has notified the partnership that it is treating the provision of information to the partnership as a discharge of its obligations as a withholding agent.

(6) *Exception for certain individuals.* The term withholding agent excludes an individual with respect to a withholdable payment made by such person that is not made in the course of such person's trade or business (including as an agent with respect to making or receiving such payment).

(e) *Foreign entity.* The term *foreign entity* means any entity that is not a U.S. person and includes a territory entity.

(f) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 11. Section 1.1474–1 is added to read as follows:

§ 1.1474–1 Liability for withheld tax.

(a) *Payment and returns of tax withheld*—(1) *In general.* A withholding agent is required to deposit any tax withheld pursuant to chapter 4 of the Internal Revenue Code as provided under paragraph (b) of this section and to make the returns prescribed by paragraphs (c) and (d) of this section, except as otherwise may be required by an FFI agreement. When several persons qualify as withholding agents with respect to a single payment, only one tax is required to be withheld and deposited.

(2) *Withholding agent liability.* A withholding agent that is required to withhold with respect to a payment subject to withholding under § 1.1471–2(a), 1.1471–4(b) (in the case of a participating FFI), or 1.1472–1(b) but fails either to withhold or to deposit any tax withheld with an authorized financial institution, as required under paragraph (b) of this section, is liable for the amount of tax not withheld and deposited.

(3) *Use of agents*—(i) *In general.* A withholding agent may use an agent to fulfill its obligations under chapter 4 of the Internal Revenue Code. The acts of an agent of a withholding agent (including the receipt of withholding certificates, the payment of amounts of income subject to withholding, and the deposit of tax withheld) are imputed to the withholding agent on whose behalf it is acting. For this purpose, the agent's actual knowledge or reason to know shall be imputed to the withholding

agent. The withholding agent's liability under paragraph (a)(2) of this section will exist irrespective of the fact that the agent is also a withholding agent and is itself separately liable for failure to comply with the provisions of chapter 4. However, the same tax, interest, or penalties shall not be collected more than once. If the agent is a foreign person, a withholding agent may treat the acts of the foreign agent as its own for purposes of determining whether it has complied with the provisions of chapter 4 of the Internal Revenue Code, but only if—

(A) There is a written agreement between the withholding agent and the foreign person acting as agent;

(B) Books and records and relevant personnel of the foreign agent are available (on a continuous basis, including after termination of the relationship) in order to evaluate the withholding agent's compliance with the provisions of chapter 4; and

(C) The withholding agent remains fully liable for the acts of its agent and does not assert any of the defenses that may otherwise be available, including under common law principles of agency, in order to avoid tax liability under the Internal Revenue Code.

(ii) *Liability of agent of withholding agent.* An agent of a withholding agent is subject to the same withholding and reporting obligations that apply to any withholding agent under the provisions of chapter 4 of the Internal Revenue Code. However, a foreign agent cannot apply the provisions of this paragraph (a)(3) to appoint another person its agent with respect to the payments it receives from the withholding agent.

(4) *Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions*—(i) *In general.* A withholding agent that cannot reliably associate a payment with documentation on the date of payment and that does not withhold under § 1.1471–2(a) or 1.1472–1(b), or withholds at less than the 30 percent rate prescribed under sections 1471 and 1472, is liable under this section for the tax required to be withheld under § 1.1471–2(a) or 1.1472–1(b), without the benefit of a reduced rate unless—

(A) The withholding agent has appropriately relied on the presumptions described in § 1.1471–3(f) in order to treat the payment as exempt from withholding; or

(B) The withholding agent can demonstrate to the satisfaction of the Commissioner that the proper amount of withholding was satisfied by another withholding agent or was otherwise paid.

(ii) *Withholding satisfied by another withholding agent.* If a withholding agent fails to deduct and withhold any amount required to be deducted and withheld under § 1.1471–2(a) or 1.1472–1(b), and that tax is paid by another withholding agent, then the amount of tax required to be deducted and withheld shall not be collected from the first-mentioned withholding agent. However, the withholding agent is not relieved from liability for any interest or penalties or additions to tax otherwise applicable in respect of the failure to deduct and withhold.

(b) *Payment of withheld tax.* Every withholding agent who withholds tax pursuant to chapter 4 of the Internal Revenue Code shall deposit such tax with an authorized financial institution as provided in § 1.6302–2(a). If for any reason the total amount of tax required to be returned for any calendar year pursuant to the income tax return described in paragraph (c) of this section has not been deposited pursuant to § 1.6302–2, the withholding agent shall pay the balance of such tax due for such year at such place as the IRS shall specify. The tax shall be paid when filing the return described in paragraph (c)(1) of this section for such year, unless the IRS specifies otherwise.

(c) *Income tax return*—(1) *In general.* Every withholding agent shall file an income tax return on Form 1042 (or such other form as the IRS may prescribe) to report chapter 4 reportable amounts (as defined in paragraph (d)(2)(i) of this section). This income tax return shall be filed on the same income tax return used to report amounts subject to reporting for chapter 3 purposes as described in § 1.1461–1(b). The return must show the aggregate amount of payments that are chapter 4 reportable amounts (as defined in paragraph (d)(2)(i) of this section) and must report the tax withheld for the preceding calendar year by the withholding agent, in addition to any information required by the form and its accompanying instructions. Withholding certificates and other statements or information provided to a withholding agent are not required to be attached to the return. A Form 1042 (or such other form as the IRS may prescribe) must be filed under this paragraph (c)(1) even if no tax was required to be withheld for chapter 4 purposes during the preceding calendar year. The withholding agent must retain a copy of Form 1042 for the applicable period of limitations on assessment and collection with respect to the amounts required to be reported on the Form 1042. For purposes of determining the applicable period of limitations, chapter 4 reportable amounts are treated as if such amounts are subject to withholding under chapter 3. See section 6501 and the regulations thereunder for the applicable period of limitations. Adjustments to the total amount of tax withheld described in § 1.1474–2 shall be stated on the return as prescribed by the form and accompanying instructions. A participating FFI shall file Form 1042 in accordance with this paragraph (c) except as otherwise provided in its FFI agreement.

(2) *Amended returns.* An amended return under this paragraph (c) must be filed on Form 1042 (or such other form as the IRS may prescribe). An amended return must include such information as the form or its accompanying instructions shall require, including, with respect to any information that has changed from the time of the filing of the return, the information that was shown on the original return and the corrected information.

(d) *Information returns for payment reporting*—(1) *Filing requirement*—(i) *In general.* Every withholding agent must file an information return on Form 1042–S (or such other form as the IRS may prescribe) to report to the IRS chapter 4 reportable amounts as described in paragraph (d)(2)(i) of this section that were paid to a recipient during the preceding calendar year. A separate Form 1042–S must be filed with the IRS for each recipient of an amount subject to reporting. A separate Form 1042–S must also be filed with the IRS for each separate type of payment made to a single recipient. The Form 1042–S shall be prepared in such manner as the form and accompanying instructions prescribe. One copy of the Form 1042–S shall be filed with the IRS on or before March 15 of the calendar year following the year in which the amount subject to reporting was paid, with a transmittal form as provided in the instructions to the Form 1042–S. Withholding certificates, certifications, documentary evidence, or other statements or documentation provided to a withholding agent are not required to be attached to the form. A copy of the Form 1042–S must be furnished to the recipient for whom the form is prepared (or any other person, as required under this paragraph or the instructions to the form) on or before March 15 of the calendar year following the year in which the amount subject to reporting was paid. The copy provided to the recipient of the payments may show more than one type of income or other payment subject to reporting on the Form 1042–S. The withholding agent must retain a copy of each Form 1042–S for the period of limitations on

assessment and collection applicable to the tax reportable on the Form 1042 to which the Form 1042–S relates (determined as set forth in paragraph (c)(1) of this section).

(ii) *Recipient*—(A) *Defined.* The term *recipient* under this paragraph (d) means a person that is a recipient of a passthru payment (including a withholdable payment) or, in the case of a participating FFI, foreign reportable amount described in paragraph (d)(2)(ii) of this section reportable for Form 1042–S reporting purposes, and includes—

(*1*) A participating FFI or a deemed-compliant FFI (regardless of whether such FFI is a flow-through entity or acts as an intermediary with respect to the payment except as otherwise provided under paragraph (d)(1)(ii)(B)(*7*) of this section);

(*2*) A nonparticipating FFI that is a beneficial owner of the payment;

(*3*) A territory financial institution that acts as an intermediary with respect to a payment and that agrees to be treated as a U.S. person under § 1.1471–3(c)(3)(iii)(F), and a territory financial institution that is a beneficial owner of the payment;

(*4*) An account holder of a participating FFI to the extent that the FFI issues a Form 1042–S to such person or the FFI provides information sufficient for a withholding agent to report on a Form 1042–S with respect to such account holder under an election by the participating FFI under section 1471(b)(3) or when the participating FFI or QI does not otherwise have withholding responsibility for the payment;

(*5*) An NFFE except to the extent described in paragraph (d)(1)(ii)(A)(*6*) of this section;

(*6*) A partner, owner, or beneficiary in a flow-through entity that is an NFFE when the withholding agent treats such partner, owner, or beneficiary as a payee and beneficial owner for purposes of determining the amount required to be withheld under § 1.1472–1;

(*7*) An exempt beneficial owner of a payment, including when the payment is made to such owner through a nonparticipating FFI that provides documentation and information sufficient for a withholding agent to determine the portion of the payment paid to such owner;

(*8*) A qualified intermediary that is a foreign branch of a U.S. person except as otherwise provided under paragraph (d)(1)(ii)(B)(*7*) of this section);

(*9*) A limited branch of a participating FFI; and

(*10*) Any other person required to be reported as a recipient as required on Form 1042–S or the instructions to the form.

(B) *Persons that are not recipients.* Persons that are not recipients include—

(*1*) A person that the withholding agent properly treats as a U.S. person under the rules of § 1.1471–3;

(*2*) Except as provided in paragraph (d)(1)(ii)(A)(*8*) of this section, a wholly owned entity that is disregarded under § 301.7701–2(c)(2) as an entity separate from its owner;

(*3*) A flow-through entity that is an NFFE to the extent that the withholding agent treats a partner, owner, or beneficiary of the NFFE as a recipient pursuant to paragraph (d)(1)(ii)(A)(*6*) of this section;

(*4*) An owner of an NFFE except as otherwise provided in paragraph (d)(1)(ii)(A)(*6*) of this section;

(*5*) A territory financial institution that acts as an intermediary with respect to a payment and does not agree to be treated as a U.S. person under § 1.1471–3(c)(3)(iii)(G);

(*6*) An account holder that is included in a pool of recalcitrant account holders of a participating FFI;

(*7*) A participating FFI, registered deemed-compliant FFI, or foreign branch of a U.S. financial institution that is a QI that is acting as an intermediary or flow-through entity with respect to a payment to the extent that such entity provides to its withholding agent information sufficient for the withholding agent to report on Form 1042–S with respect to one or more account holders of such FFI or payees that are nonparticipating FFIs;

(*8*) A nonparticipating FFI that acts as an intermediary with respect to a payment or that is a flow-through entity; and

(*9*) Any other person not treated as a recipient on Form 1042–S and its accompanying instructions.

(2) *Amounts subject to reporting*—(i) *In general.* Subject to paragraph (d)(2)(iii) of this section, the term *chapter 4 reportable amount* means an amount reportable on a Form 1042–S for chapter 4 of the Internal Revenue Code purposes that is—

(A) U.S. source FDAP income (regardless of whether subject to withholding under chapter 4 and including a passthru payment that is U.S. source FDAP income) paid on or after January 1, 2014;

(B) Gross proceeds subject to withholding under chapter 4; and

(C) Foreign passthru payments subject to withholding under chapter 4.

(ii) *Special transitional reporting by participating FFIs*—(A) *Reporting requirements for certain payments to nonparticipating FFIs.* In the case of a participating FFI that makes a payment to a nonparticipating FFI of a foreign reportable amount, the participating FFI shall report with respect to each such nonparticipating FFI the aggregate amount of all such payments made to the participating FFI for each of the calendar years 2015 and 2016. A *foreign reportable amount* means–

(*1*) *FDAP income.* A payment of FDAP income as defined in § 1.1473–1(a)(2)(i)(A) that would be a withholdable payment if paid by a U.S. person; and

(*2*) *Other financial payments.* [Reserved].

(B) *Payments to limited branches.* A participating FFI shall report withholdable payments made to limited branches as described in § 1.1471–4(e)(2).

(iii) *Exceptions to reporting.* A chapter 4 reportable amount does not include any amount that is excluded from the definition of withholdable payments under § 1.1473–1(a)(4)(i), (iii), (iv), and (v).

(iv) *Coordination with chapter 3 of the Internal Revenue Code.* A payment that is not subject to reporting under this paragraph (d)(2) may be subject to chapter 3 reporting on Form 1042–S to the extent provided on such form and its accompanying instructions or under § 1.1461–1(c)(2). The recipient information and other information required to be reported on Form 1042–S for purposes of chapter 4 shall be in addition to the information required to be provided on Form 1042–S for purposes of chapter 3.

(3) *Required information.* The information required to be furnished under this paragraph (d)(3) shall be based upon the information provided by or on behalf of the recipient of an amount subject to reporting (as corrected and supplemented based on the withholding agent's actual knowledge), the presumption rules of § 1.1471–3(f), or the requirements for reporting recalcitrant account holders of participating FFIs under § 1.1471–4(d)(6). The Form 1042–S must include the following information, if applicable—

(i) The name, address, and EIN of the withholding agent;

(ii) A description of each category of income or payment made based on the income and payment codes provided on the form (for example, interest, dividends, and gross proceeds) and the aggregate amount in each category expressed in U.S. dollars;

(iii) The rate and amount of withholding applied or the basis for exempting the payment from withholding under chapter 4 of the

Internal Revenue Code (based on exemption codes provided on the form);

(iv) The name and address of the recipient and its TIN or EIN (when required);

(v) The name and address of any FFI acting as an intermediary, a flow-through entity that is an NFFE, or territory financial institution that is not treated as a U.S. person under § 1.1471–3(c)(2)(iii)(G) when an account holder or owner of such entity (including an unknown recipient or owner) is treated as the recipient of the payment;

(vi) The TIN or EIN of an entity reported under paragraph (d)(3)(v) of this section;

(vii) The country (based on the country codes provided on the form) of the recipient and of any entity the name of which appears on the form; and

(viii) Such information as the form or instructions may require in addition to, or in lieu of, information required under this paragraph (d)(3).

(4) *Method of reporting*—(i) *Payments by U.S. withholding agent to recipients.* Except as otherwise provided in this paragraph (d) or on the Form 1042–S and its accompanying instructions, a withholding agent that is a U.S. person (other than a foreign branch of a U.S. person that is a qualified intermediary) and that makes a payment of a chapter 4 reportable amount must file a separate Form 1042–S for each recipient that receives such amount. Except as otherwise provided on Form 1042–S or its instructions, only payments for which the income or payment code, exemption code, withholding rate, and recipient code are the same may be reported on a single Form 1042–S filed with the IRS. See paragraph (d)(4)(ii) of this section for reporting of payments made to a person that is not a recipient and that is otherwise to be reported on Form 1042–S.

(A) *Payments to certain entities that are beneficial owners.* If the beneficial owner of a payment made by a U.S. withholding agent is an exempt beneficial owner, a nonparticipating FFI, an NFFE, or a territory entity, it must complete Form 1042–S treating such entity as the recipient of the payment.

(B) *Payments to participating FFIs, deemed-compliant FFIs, or certain QIs.* A U.S. withholding agent that makes a payment of a chapter 4 reportable amount to a participating FFI or a deemed-compliant FFI shall complete Forms 1042–S treating the participating FFI or the deemed-compliant FFI as the recipient. A participating FFI acting as an intermediary with respect to a payment may provide a U.S. withholding agent with pooled information regarding recalcitrant account holders that are entitled to the payment pursuant to an election under section 1471(b)(3) and § 1.1471–2(a)(2)(iii), pursuant to § 1.1471–2(a)(2)(i) in the case of a payment of U.S. source FDAP to a participating FFI that is an NQI, NWP, or NWT, or pursuant to § 1.1471–2(a)(2)(iii)(B) in the case of a foreign branch of a U.S. financial institution that provides pooled information regarding its account holders subject to withholding under chapter 4 of the Internal Revenue Code. The U.S. withholding agent must complete a separate Form 1042–S issued to the FFI for each such pool to the extent required on Form 1042–S and its accompanying instructions. A participating FFI may, however, provide to its withholding agent specific payee information with respect to one or more recalcitrant account holders that are entitled to the payment. In such a case, the participating FFI providing such information shall not be treated as a recipient of the payment. See paragraph (d)(4)(ii)(A) of this section for reporting rules applicable to cases in which participating FFIs, deemed-compliant FFIs, or certain QIs are not treated as recipients.

(C) *Amounts paid to territory financial institutions acting as intermediaries.* A U.S. withholding agent making a payment to a territory financial institution acting as an intermediary shall complete Form 1042–S as follows—

(*1*) If the territory financial institution has agreed to be treated as a U.S. person with respect to the payment under § 1.1471–3(c)(3)(iii)(F), the withholding agent files Form 1042–S treating the territory financial institution as the recipient; or

(*2*) If the territory financial institution has provided the withholding agent with a withholding certificate that transmits information regarding beneficial owners or other recipients of a chapter 4 reportable amount, the withholding agent must complete a separate Form 1042–S for each recipient whose documentation is associated with the territory financial institution's withholding certificate as described in paragraph (d)(4)(ii)(A) of this section and must report the territory financial institution under that paragraph.

(D) *Amounts paid to NFFEs.* A U.S. withholding agent that makes payments of chapter 4 reportable amounts to an NFFE shall complete Forms 1042–S treating the NFFE as the recipient unless such withholding agent treats a partner, owner, or beneficiary in a flow-through entity that is an NFFE as a payee for purposes of determining the amount required to be withheld under § 1.1472–1(b).

(ii) *Payments made by withholding agents to certain entities that are not recipients*—(A) *Form 1042–S reporting of entities that provide information for a withholding agent to perform specific payee reporting.* If a U.S. withholding agent makes a payment of a chapter 4 reportable amount to a flow-through entity that is an NFFE, a nonparticipating FFI receiving a payment on behalf of an exempt beneficial owner, a territory financial institution, a participating FFI, a deemed-compliant FFI, or a foreign branch of a U.S. financial institution that is acting as a QI, it must complete a separate Form 1042–S for each recipient that is an owner of or account holder in such entity to the extent the withholding agent can reliably associate the payment with valid documentation (under the rules of § 1.1471–3(c) and (d)) provided by such entity (as applicable) with respect to each such recipient. If a payment is made through tiers of such entities, the withholding agent must nevertheless complete Form 1042–S for each recipient to the extent it can reliably associate the payment with documentation provided with respect to that recipient. A withholding agent that is completing a Form 1042–S for a recipient described in this paragraph (d)(4)(ii)(A) must include on the Form 1042–S the name of such entity through which the recipient receives the payment and its TIN or FFI–EIN (if applicable).

(B) *Nonparticipating FFIs that act as intermediaries.* If a withholding agent makes a payment of a chapter 4 reportable amount to a nonparticipating FFI that it is required to treat as an intermediary or as a flow-through entity with regard to a payment under rules described in § 1.1471–3(c)(2)(iii), and except as otherwise provided in paragraph (d)(1)(ii)(A)(*7*), it shall report the recipient of the payment as an unknown recipient and shall report the nonparticipating FFI as provided in paragraph (d)(4)(ii)(A) of this section for an entity not treated as a recipient.

(C) *Disregarded entities.* If a U.S. withholding agent makes a payment to a disregarded entity but receives a valid withholding certificate or other documentary evidence from a person that is the single owner of a disregarded entity, the withholding agent must file a Form 1042–S treating the single owner as the recipient. The FFI–EIN on the Form 1042–S, or TIN, if required, must be the single owner's FFI–EIN or TIN.

(iii) *Reporting by nonparticipating FFIs, flow-through entities, or territory financial institutions that do not elect to*

be treated as U.S. persons. A nonparticipating FFI, a flow-through entity that is a foreign person, or territory financial institution must file Forms 1042–S for chapter 4 reportable amounts paid to recipients in the same manner as a U.S. withholding agent. A Form 1042–S will not be required, however, if another withholding agent has reported the same amount with regard to the same recipient for which such entity would otherwise be required to file a return under this paragraph (d)(4)(iii) and the entire amount that should be withheld from such payment has been withheld. The nonparticipating FFI, flow-through entity, or territory financial institution must report payments made to recipients to the extent it has failed to provide the appropriate documentation to another withholding agent or to the extent it knows, or has reason to know, that less than the required amount has been withheld.

(iv) *Other withholding agents.* Any person that is a withholding agent that is not a participating FFI shall file Forms 1042–S in the same manner as a U.S. withholding agent and in accordance with the instructions to the form. A participating FFI shall file Forms 1042–S in accordance with this paragraph (d) except as otherwise provided in its FFI agreement.

(e) *Magnetic media reporting.* A withholding agent that is not a financial institution and that is required to file 250 or more Form 1042–S information returns for a taxable year must file Form 1042–S returns on magnetic media. See § 301.6011–2(b) of this chapter for the requirements of a withholding agent that is not a financial institution with respect to the filing of Forms 1042–S on magnetic media. See § 301.1474–1(a) of this chapter for the requirements applicable to a withholding agent that is a financial institution with respect to the filing of Forms 1042–S on magnetic media.

(f) *Indemnification of withholding agent.* A withholding agent is indemnified against the claims and demands of any person for the amount of any tax it deducts and withholds in accordance with the provisions of chapter 4 of the Internal Revenue Code and the regulations thereunder. A withholding agent that withholds based on a reasonable belief that such withholding is required under chapter 4 and the regulations thereunder is treated for purposes of section 1474 and this paragraph (f) as having withheld tax in accordance with the provisions of chapter 4 and the regulations thereunder. This paragraph (f) does not relieve a withholding agent from tax liability under chapter 3 or 4 of the Internal Revenue Code or the regulations under those chapters.

(g) *Extensions of time to file Forms 1042 and 1042–S.* The IRS may grant an extension of time to file Form 1042 or 1042–S as described in § 1.1461–1(g).

(h) *Penalties.* For penalties and additions to tax for failure to file returns or file and furnish statements in accordance with this section, see sections 6651, 6662, 6663, 6721, 6722, 6723, 6724(c), 7201, 7203, and the regulations under those sections. For penalties and additions to the tax for failure to timely pay the tax required to be withheld under chapter 4 of the Code, see sections 6656, 6672, and 7202 and the regulations under those sections.

(i) *Reporting requirements with respect to owner-documented FFIs*—(1) *Reporting by U.S. withholding agent.* In a case in which a U.S. withholding agent makes during a calendar year a payment of a chapter 4 reportable amount to an entity account holder that the withholding agent treats as an owner-documented FFI under § 1.1471–3(d)(6), the withholding agent will be required to report for such calendar year with respect to each specified U.S. person that has a direct or indirect interest in such entity the following information—

(*a*) The name of the owner-documented FFI;

(*b*) The name of the specified U.S. person;

(*c*) The TIN or EIN of the specified U.S. person;

(*d*) The address of the specified U.S. person; and

(*e*) Any other information required on the form and accompanying instructions provided for purposes of such reporting.

(2) *Cross reference to reporting by participating FFIs.* For the reporting requirements of a participating FFI with respect to an account holder that it treats as an owner-documented FFI, see § 1.1471–4(d)(2)(iv).

(j) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 12. Section 1.1474–2 is added to read as follows:

§ 1.1474–2 Adjustments for overwithholding or underwithholding of tax.

(a) *Adjustments of overwithheld tax*—(1) *In general.* Except as otherwise provided by this section, a withholding agent that has overwithheld tax under chapter 4 and made a deposit of the tax as provided in § 1.6302–2(a) may adjust the amount of overwithheld tax either pursuant to the reimbursement procedure described in paragraph (a)(3) of this section or pursuant to the set-off procedure described in paragraph (a)(4) of this section. Adjustments under this paragraph (a) may only be made within the time prescribed under paragraph (a)(3) or (a)(4) of this section. After such time, a refund of the amount of overwithheld tax can only be claimed pursuant to the procedures described in § 1.1474–5 and chapter 65 of the Code and the regulations thereunder.

(2) *Overwithholding.* For purposes of this section, the term *overwithholding* means any amount actually withheld (determined before application of the adjustment procedures under this section) from an item of income or other payment pursuant to chapter 4 of the Internal Revenue Code or the regulations thereunder in excess of both the amount required to be withheld with respect to such item of income or other payment under chapter 4 and, in the case of an amount subject to chapter 3 withholding, the actual tax liability of the beneficial owner of the income or payment to which the withheld amount is attributable, regardless of whether such overwithholding was in error or appeared correct at the time it occurred.

(3) *Reimbursement of tax*—(i) *General rule.* Under the reimbursement procedure, the withholding agent repays the beneficial owner or payee for the amount of overwithheld tax. In such a case, the withholding agent may reimburse itself by reducing, by the amount actually repaid to the beneficial owner or payee, the amount of any deposit of tax made by the withholding agent under § 1.6302–2(a)(1)(iii) for any subsequent payment period occurring before the end of the calendar year following the calendar year of overwithholding. A withholding agent must obtain valid documentation as described under § 1.1471–3(c)(7) with respect to the beneficial owner or payee supporting a reduced rate of withholding before adjusting the amount of tax under this paragraph (a)(3)(i). Any such reduction that occurs for a payment period in the calendar year following the calendar year of overwithholding shall be allowed only if—

(A) The repayment occurs before the earlier of the due date (without regard to extensions) for filing the Form 1042–S for the calendar year of overwithholding or the date that the Form 1042–S is actually filed with the IRS;

(B) The withholding agent states on timely filed (not including extensions) Form 1042–S the amount of tax withheld and the amount of any actual repayment; and

(C) The withholding agent states on a timely filed (not including extensions) Form 1042 for the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with § 1.6414–1.

(ii) *Record maintenance.* If the beneficial owner or payee is repaid an amount of overwithheld tax under the provisions of this paragraph (a)(3), the withholding agent shall keep as part of its records a receipt showing the date and amount of repayment, and the withholding agent must provide a copy of such receipt to the beneficial owner or payee. For this purpose, a canceled check or an entry in a statement is sufficient provided that the check or statement contains a specific notation that it is a refund of tax overwithheld.

(4) *Set-offs.* Under the set-off procedure, the withholding agent may repay the beneficial owner or payee by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 or 4 of the Internal Revenue Code or the regulations thereunder to be withheld from the amount paid by the withholding agent to such person before the earlier of the due date (without regard to extensions) for filing the Form 1042–S for the calendar year of overwithholding or the date that the Form 1042–S is actually filed with the IRS. For purposes of making a return on Form 1042 or 1042–S (or an amended form) for the calendar year of overwithholding and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such payment under chapter 3 or 4, respectively, and the regulations thereunder.

(5) *Examples.* The principles of paragraph (a) of this section are illustrated by the following examples:

Example 1. (i) Fund A, organized as a United Kingdom corporation, is a unit investment trust that is an FFI and that is a resident that qualifies for the benefits of the income tax treaty between the United States and the United Kingdom. On December 1, 2014, domestic corporation C pays a dividend of $100 to Fund A, at which time C withholds $30 of tax pursuant to § 1.1471–2(a) and remits the balance of $70 to Fund A because it does not hold valid documentation that Fund A is a participating FFI or deemed-compliant FFI. On February 10, 2015, prior to the time that C is obligated to file its Form 1042, Fund A furnishes a valid Form W–8BEN described in §§ 1.1441–1(e)(2)(i) and 1.1471–3(c)(3)(ii) upon which C may rely to treat Fund A as the beneficial owner of the income and as a participating FFI so that C may reduce the rate of withholding to 15% under the provisions of the United States-United Kingdom income tax treaty with respect to the payment. C repays the excess tax withheld of $15 to Fund A.

(ii) During the 2014 calendar year, C makes no other payments upon which tax is required to be withheld under chapter 3 or 4 of the Code; accordingly, its Form 1042 for such year, filed on March 15, 2015, shows total tax withheld of $30, an adjusted total tax withheld of $15, and tax deposited of $30 for such year. Pursuant to § 1.6414–1, C claims a credit for the overpayment of $15 shown on the Form 1042 for 2014. Accordingly, C is permitted to reduce by $15 any deposit required by § 1.6302–2 to be made of tax withheld during the 2015 calendar year with respect to taxes due under chapters 3 or 4. The Form 1042–S required to be filed by C with respect to the dividend of $100 paid to Fund A in 2014 is required to show tax withheld of $30 and tax repaid of $15 to Fund A.

Example 2. (i) In November 2014, Bank A, a foreign bank organized in the United Kingdom that is a nonqualified intermediary, receives on behalf of one of its account holders, Z, an individual, a $100 dividend payment from C, a domestic corporation. At the time of payment, C withholds $30 pursuant to § 1.1471–2(a) and remits the balance of $70 to Bank A, because it does not hold valid documentation that it may rely on to treat Bank A as a participating FFI or deemed-compliant FFI. On December 2014, prior to the time that C files its Forms 1042 and 1042–S, Bank A furnishes a valid Form W–8IMY and FFI withholding statement described in § 1.1471–3(c)(3)(iii) that establishes Bank A's status as a participating FFI that is a nonqualified intermediary, as well as a valid Form W–8BEN that has been completed by Z as described in § 1.1471–3(c)(2)(ii) and § 1.1441–1(e)(2)(i) upon which C may rely to treat the payment as made to Z, a nonresident alien individual who is a resident of the United Kingdom eligible for a reduced rate of withholding of 15% under the income tax treaty between the United States and United Kingdom. Although C has already deposited the $30 that was withheld, as required by § 1.6302–2(a)(1)(iv), C remits the amount of $15 to Bank A for the benefit of Z.

(ii) During the 2014 calendar year, C makes no other payments upon which tax is required to be withheld under chapters 3 or 4; accordingly, its return on Form 1042 for such year, which is filed on March 15, 2015, shows total tax withheld of $30, an adjusted total tax withheld of $15, and tax deposited of $30. Pursuant to § 1.6414–1(b), C claims a credit for the overpayment of $15 shown on the Form 1042 for 2014. Accordingly, it is permitted to reduce by $15 any deposit required by § 1.6302–2 to be made of tax withheld during the 2015 calendar year. The Form 1042–S required to be filed by C for 2014 with respect to the dividend of $100 beneficially owned by Z is required to show tax withheld of $30 and tax repaid of $15 to Z.

(b) *Withholding of additional tax when underwithholding occurs.* A withholding agent that has underwithheld under chapter 4, may apply the procedures described in § 1.1461–2(b) (by substituting the term ''chapter 4'' for ''chapter 3'') to satisfy its withholding obligations under chapter 4 with respect to a payee or beneficial owner.

(c) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 13. Section 1.1474–3 is added to read as follows:

§ 1.1474–3 Withheld tax as credit to beneficial owner of income.

(a) *Creditable tax.* The entire amount of the income, if any, attributable to a payment from which tax is required to be withheld under chapter 4 of the Internal Revenue Code (including income deemed paid by a withholding agent under § 1.1473–1(a)(2)(v)) shall be included in gross income in a return required to be made by the beneficial owner of the income, without deduction for the amount required to be or actually withheld, but the amount of tax actually withheld shall be allowed as a credit against the total income tax computed in the beneficial owner's return.

(b) *Amounts paid to persons that are not the beneficial owners.* Amounts actually deducted and withheld under chapter 4 of the Internal Revenue Code on payments made to a fiduciary, agent, partnership, trust, or intermediary are deemed to have been paid by the beneficial owner of the item of income or other payment subject to withholding under chapter 4 except when the fiduciary, agent, partnership, trust, or intermediary pays the tax from its own funds and does not in turn withhold with respect to the payment made to such person. Thus, for example, if a beneficiary of a trust is subject to the taxes imposed by section 1, 2, 3, or 11 of the Internal Revenue Code upon any amount of distributable net income or other taxable distribution received from a foreign trust, the part of any amount withheld at source under chapter 4 of the Code that is properly allocable to the income so taxed to such beneficiary shall be credited against the amount of the income tax computed upon the beneficiary's return, and any excess shall be refunded to the beneficiary in accordance with § 1.1474–5 and chapter 65 of the Code.

(c) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 14. Section 1.1474–4 is added to read as follows:

§ 1.1474–4 Tax paid only once.

(a) *Tax paid.* If the tax required to be withheld under chapter 4 on a payment is paid by the payee, beneficial owner,

or the withholding agent, it shall not be re-collected from any other, regardless of the original liability therefor. However, this section does not relieve the person that did not withhold tax from liability for interest or any penalties or additions to tax otherwise applicable.

(b) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 15. Section 1.1474–5 is added to read as follows:

§ 1.1474–5 Refunds or credits.

(a) *Refund and credit*—(1) *In general.* Except to the extent otherwise provided in this section, a refund or credit under chapter 65 of tax which has actually been withheld at the source at the time of payment under chapter 4 shall be made to the beneficial owner of the payment to which the amount of withheld tax is attributable if the beneficial owner or payee meets the requirements of this paragraph (a). To the extent that the amount withheld under chapter 4 of the Internal Revenue Code is not actually withheld at source, but is later paid by the withholding agent to the IRS, the refund or credit under chapter 65 of the Code shall be made to the withholding agent to the extent the withholding agent can provide documentation with respect to the beneficial owner or payee described in paragraphs (a)(2) and (3) of this section sufficient for the beneficial owner or payee to have obtained a refund of the tax and sufficient for the withholding agent to have applied a reduced rate or exemption from withholding under chapter 4 of the Code. The preceding sentence shall not, however, apply to a nonparticipating FFI that is acting as a withholding agent with respect to one or more of its account holders. In such a case, only the account holders of the nonparticipating FFI will be entitled to a credit or refund of an amount withheld upon under chapter 4, to the extent otherwise allowable under this section.

(2) *Limitation to refund and credit for a nonparticipating FFI.* Notwithstanding paragraph (a)(1) of this section, a nonparticipating FFI (determined as of the time of payment) that is the beneficial owner of an item of income or other payment that is subject to withholding under chapter 4 of the Code shall not be entitled to any credit or refund pursuant to section 1474(b)(2) and this section unless it is entitled to a reduced rate of tax with respect to the income or other payment by reason of any treaty obligation of the United States. If the nonparticipating FFI is entitled to a reduced rate of tax with respect to an item of income or other payment by reason of any treaty obligation of the United States, the amount of any credit or refund with respect to such tax shall not exceed the amount of credit or refund attributable to such reduction in rate on the item of income or other payment, and no interest otherwise allowable under section 6611 shall be allowed or paid with respect to such credit or refund

(3) *Requirement to provide additional documentation for certain beneficial owners*—(i) *In general.* Except as provided in paragraph (a)(3)(ii) of this section, no refund or credit shall be allowed under paragraph (a)(1) of this section to a beneficial owner from whose income or other payment to which the amount of such withheld tax was attributable if such beneficial owner is an NFFE, unless the NFFE attaches to its income tax return the information described in paragraph (a)(3)(iii) of this section.

(ii) *Claim of reduced withholding under an income tax treaty.* Paragraph (a)(3)(i) of this section does not apply to a beneficial owner that is entitled to a reduced rate of tax with respect to the income or other payment by reason of any treaty obligation of the United States.

(iii) *Additional documentation to be furnished to the IRS for certain NFFEs.* The information described in this paragraph (a)(3)(iii) is—

(A) A certification that the beneficial owner does not have any substantial U.S. owners;

(B) The form described in § 1.1472–1(e)(2) relating to each substantial U.S. owner of such entity; or

(C) Other appropriate documentation to establish withholding was not required under chapter 4.

(b) *Tax repaid to payee.* For purposes of this section and § 1.6414–1, any amount of tax withheld under chapter 4, which, pursuant to § 1.1474–2(a)(1), is repaid by the withholding agent to the beneficial owner of the income or payment to which the withheld amount is attributable shall be considered as tax which, within the meaning of sections 1474 and 6414, was not actually withheld by the withholding agent.

(c) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 16. Section 1.1474–6 is added to read as follows:

§ 1.1474–6 Coordination of chapter 4 of the Internal Revenue Code with other withholding provisions.

(a) *In general.* This section coordinates the withholding requirements of a withholding agent when a withholdable payment or passthru payment is subject to withholding under both chapter 4 and another provision of the Code. See § 1.1473–1(a) for the definition of withholdable payment and see § 1.1471–5(h) for the definition of passthru payment.

(b) *Coordination of withholding for amounts subject to withholding under sections 1441, 1442, and 1443*—(1) *In general.* In the case of a withholdable payment or passthru payment that is both subject to withholding under chapter 4 and is an amount subject to withholding under § 1.1441–2(a), a withholding agent may credit the withholding applied under chapter 4 of the Internal Revenue Code against its liability for any tax due under sections 1441, 1442, or 1443. See § 1.1474–1(c) and (d) for the income tax return and information return reporting requirements that apply in the case of a payment that is a withholdable payment subject to withholding under chapter 4 of the Code that is also an amount subject to withholding under § 1.1441–2(a).

(2) *When withholding is applied.* For purposes of paragraph (b)(1) of this section, withholding is applied by a withholding agent under section 1441 (or section 1442 or 1443) or chapter 4 of the Code (as applicable) when the withholding agent has withheld on the payment and has designated the withholding as having been made under section 1441 (or section 1442 or 1443) or chapter 4 to the extent required in the reporting described in § 1.1474–1(b) and (c). For purposes of allowing an offset of withholding and allowing a credit to a withholding agent against its liability for such tax as described in paragraph (b)(1) of this section, withholding is treated as applied for purposes of paragraph (a) of this section only when the withholding agent has actually withheld on a payment and has not made any adjustment for overwithheld tax applicable to the amount withheld that would be otherwise permitted with respect to the payment.

(c) *Coordination with amounts subject to withholding under section 1445*—(1) *In general.* An amount subject to withholding under section 1445 is not subject to withholding under chapter 4.

(2) *Determining amount of distribution from certain domestic corporations subject to section 1445 or chapter 4 withholding*—(i) *Distribution from qualified investment entity.* In the case of a passthru payment (including a withholdable payment) subject to withholding under chapter 4 that is a distribution with respect to the stock of a qualified investment entity as

described in section 897(h)(4)(A), withholding under chapter 4 does not apply when withholding under section 1445 applies to such amounts. With respect to the portion of such distribution that is not subject to withholding under section 1445 but is subject to withholding under section 1441 (or section 1442 or 1443) and chapter 4, the coordination rule described in paragraph (b)(1) of this section shall apply.

(ii) *Distribution from a United States Real Property Holding Corporation.* A distribution (or portion of a distribution) from a United States real property holding corporation (or from a corporation that was a United States real property holding corporation at any time during the five-year period ending on the date of the distribution) with respect to its stock that is a United States real property interest under section 897(c) is subject to withholding under chapter 4 and is also subject to the withholding provisions of section 1441 (or section 1442 or 1443) and section 1445. In such a case, to the extent that the United States real property holding corporation chooses to withhold on a distribution only under section 1441 (or section 1442 or 1443) pursuant to § 1.1441–3(c)(4)(i)(A), the coordination rule described in paragraph (b)(1) of this section shall apply to such distribution. Alternatively, to the extent that the United States real property holding corporation chooses to withhold under both section 1441 (or section 1442 or 1443) and section 1445 pursuant to § 1.1441–3(c)(4)(i)(B), the coordination rule described in paragraph (b)(1) of this section shall apply to the portion of such distribution described in § 1.1441–3(c)(4)(i)(B)(1), and withholding under section 1445 shall apply to the amount of such distribution described in § 1.1441–3(c)(4)(i)(B)(2). A withholding agent other than a United States real property holding corporation may, absent actual knowledge or reason to know otherwise, rely on the representations of the United States real property holding corporation making the distribution regarding the portion of the distribution that is estimated to be a dividend under § 1.1441–3(c)(2)(ii)(A) and in the case of a failure by the withholding agent to withhold under chapter 4 the required amount shall be imputed to the United States real property holding corporation.

(d) *Coordination with section 1446*—(1) *In general.* Except as otherwise provided in paragraph (d)(2) of this section, a withholdable payment or a passthru payment subject to withholding under section 1446 shall not be subject to withholding under chapter 4. See § 1.1473–1(a)(4)(ii) for the exclusion from withholdable payment and the requirements for such exclusion for any item of income that is taken into account under section 871(b)(1) or 882(a)(1) for the taxable year.

(2) *Determining amount of distribution subject to section 1446.* [Reserved].

(e) *Coordination of withholding under section 3406.* [Reserved].

(f) Example. Chapter 4 withholding satisfies chapter 3 withholding obligation. WA, a U.S. withholding agent, makes a payment consisting of a dividend from sources within the United States to NPFFI. NPFFI is a nonparticipating FFI that is a resident of country X, a country that has an income tax treaty in force with the United States that would allow WA to reduce the rate of withholding for section 1442 purposes on a payment of U.S. source dividends paid to NPFFI to 15%. Because the payment is a withholdable payment and NPFFI is a nonparticipating FFI, WA withholds on the payment at the rate of 30% under chapter 4. WA does not make any adjustment for overwithholding that is otherwise permitted with respect to this payment. Although the payment is also an amount subject to withholding under section 1442, WA is not required to withhold any tax on this payment under section 1442. WA may credit its withholding applied under chapter 4 against the amount of tax otherwise required to be withheld on this payment under section 1442. See § 1.1474–5(a)(2) for the credit and refund procedures for nonparticipating FFIs that are entitled to a reduced rate of tax with respect to an amount subject to withholding under chapter 4 by reason of any treaty obligation of the United States.

(g) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

Par. 17. Section 1.1474–7 is added to read as follows:

§ 1.1474–7 Confidentiality of information.

(a) *Confidentiality of information.* Pursuant to section 1474(c)(1), the provisions of § 3406(f)–1(a) shall apply (substituting ''sections 1471 through 1474'' for ''section 3406'') to information obtained or used in connection with the requirements of chapter 4.

(b) *Exception for disclosure of participating FFIs.* Pursuant to section 1474(c)(2), the identity of a participating FFI or deemed-compliant FFI shall not be treated as return information for purposes of section 6103.

(c) *Effective/applicability date.* The rules of this section apply on [EFFECTIVE DATE OF FINAL RULE].

PART 301—PROCEDURE AND ADMINISTRATION

Par. 18. The authority citation for part 301 is amended by adding an entry, in numerical order, to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.1474–1 also issued under 26 U.S.C. 1474(f). * * *

Par. 19. Section 301.1474–1 is added to read as follows:

§ 301.1474–1 Required use of magnetic media for financial institutions filing Form 1042–S.

(a) *Financial institutions filing of information returns on Form 1042–S.* If a financial institution is required to file a Form 1042–S, *Foreign Person's U.S. Source Income Subject to Withholding* under § 1.1474–1(d) of this chapter, the financial institution must file the information required by the applicable forms and schedules on magnetic media. Returns filed on magnetic media must be made in accordance with applicable regulations, revenue procedures, publications, forms, instructions and the IRS.gov Internet site. In prescribing regulations, revenue procedures, publications, forms, and instructions, including those on the IRS.gov Internet site, the Commissioner may direct the type of magnetic media filing. See § 601.601(d)(2) of this chapter.

(b) *Waiver.* The Commissioner may grant waivers from the requirements of this section in cases of undue hardship. A request for waiver must be made in accordance with applicable revenue procedures or publications. The waiver also will be subject to the terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) *Failure to file.* If a financial institution fails to file a Form 1042–S on magnetic media when required to do so by this section, the financial institution is deemed to have failed to comply with the information reporting requirements under section 6723 of the Internal Revenue Code. See section 6724(c) for failure to meet magnetic media requirements. In determining whether there is reasonable cause for failure to file the return, § 301.6651–1(c) and rules similar to the rules in § 301.6724–1(c)(3) (undue economic hardship related to filing information returns on magnetic media) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section—

(1) *Magnetic media.* The term *magnetic media* means any magnetic media permitted under applicable

regulations, revenue procedures, or publications. These generally include magnetic tape, tape cartridge, and diskette, as well as other media, such as electronic filing, specifically permitted under the applicable regulations, procedures, publications, forms, or instructions. See § 601.601(d)(2) of this chapter.

(2) *Financial institution.* The term *financial institution* has the meaning set forth in section 1471(d)(5) of the Internal Revenue Code and the regulations thereunder.

(e) *Effective/applicability date.* This section applies to any Form 1042–S filed with respect to taxable years ending after December 31, 2013.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–2979 Filed 2–8–12; 8:45 am]

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Part IV

Department of Labor

Employment and Training Administration

20 CFR Part 672
YouthBuild Program; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 672

RIN 1205–AB49

YouthBuild Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the U.S. Department of Labor (Department) issues this final rule to implement the YouthBuild Transfer Act of 2006 (Transfer Act), which establishes the YouthBuild program in the Department under subtitle D of Title I of the Workforce Investment Act of 1998 (WIA) as amended. The final rule clarifies the requirements of the Transfer Act for YouthBuild program providers and participants. The final rule sets the standards under which YouthBuild program providers can carry out the goals of the program, which are to assist at-risk youth in obtaining a High School diploma or General Educational Development (GED) diploma and acquiring occupational skills training that leads to employment through the construction/rehabilitation of housing for low-income or homeless individuals and families in the community.

DATES: *Effective date:* This final rule is effective April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Sanzanna Toles, Program Manager, Division of Youth Services, Office of Workforce Investment, U.S. Department of Labor, 200 Constitution Avenue, Room N–4508, Washington, DC 20210; telephone 202–693–3030 (this is not a toll free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal information Relay service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

a. The ETA of the Department issues this final rule to implement the Transfer Act, which establishes the YouthBuild program in the Department under subtitle D of Title I of the WIA as amended.

b. On September 22, 2006, the Transfer Act, codified at Section 173A of the WIA, 29 U.S.C. 2918a, was signed into law. The Transfer Act authorizes grants for job training and educational activities for at-risk youth who, as part of their training, help construct or rehabilitate housing for homeless individuals and families and low-income families in their respective communities. Participants receive a combination of classroom training, job skills development, and on-site training in the construction trades.

II. Summary of the Major Provisions of the Regulatory Action In Question

The final rule clarifies the requirements of the Transfer Act for YouthBuild program providers and participants. The final rule sets the standards under which YouthBuild program providers can carry out the goals of the program, which are to assist at-risk youth in obtaining a High School diploma or GED and acquiring occupational skills training that leads to employment through the construction/rehabilitation of housing for low-income or homeless individuals and families in the community. Furthermore, the final rule expands the occupational skills training opportunities in YouthBuild beyond construction skills training. We have determined, based on comments received advocating the expansion of the training offered to include occupational skills training and our program administration experience, that allowing other occupational skills training will help YouthBuild programs provide more successful job placement outcomes and secondary schools placements for program participants.

III. Costs and Benefits

This rule has not been designated an economically significant rule under section 3(f) of Executive Order 12866. However, we provide an analysis of the impact of the final rule, including a costs and benefits analysis under Executive Order 13563, in the Administrative Section of this final rule.

The Preamble of this final rule is organized as follows:

I. Background—provides a brief description of the development of the final rule;
II. General Discussion of the Rulemaking;
III. Section-by-Section Review of the Final Rule—analyzes comments and summarizes and discusses the structure and requirements of the YouthBuild Program;
IV. Administrative Section—sets forth the applicable regulatory requirements.

I. Background

On September 22, 2006, the YouthBuild Transfer Act of 2006, Public Law 109–281 (Transfer Act), codified at Section 173A of the Workforce Investment Act of 1998 (WIA), 29 U.S.C. 2918a, was signed into law. The Transfer Act authorizes grants for job training and educational activities for at-risk youth who, as part of their training, help construct or rehabilitate housing for homeless individuals and families and low-income families in their respective communities. Participants receive a combination of classroom training, job skills development, and on-site training in the construction trades.

The White House Task Force for Disadvantaged Youth recommended transferring the administration of the YouthBuild program, also known as ''Hope for Youth,'' from the U.S. Department of Housing and Urban Development (HUD) to the Department. *The White House Task Force for Disadvantaged Youth Final Report.* Pg. 4, October 2003.

The transfer allows for greater coordination of the YouthBuild program with Job Corps, WIA Youth Programs, the workforce investment system, including local workforce investment boards (WIBs), One-Stop Career Centers, and their partner programs (for example, Federal, State, and local education agencies), while at the same time retaining many of the same affordable housing goals as the HUD program. The Transfer Act transfers the authority for the YouthBuild program from the Cranston-Gonzalez National Affordable Housing Act (49 U.S.C. 12899 *et seq.*) (Cranston-Gonzales Act) to subtitle D of Title I of WIA, and it makes modifications and changes to the programs that focus on increasing the skilled workforce available for the construction trades.

The Transfer Act authorizes the expansion of activities authorized under the YouthBuild program to include many activities authorized under the WIA Title I youth formula program. This rule maintains all the goals of the YouthBuild program as originally developed under HUD, but shifts the emphasis to education and skills training for at-risk youth participants. The Department will continue to support the development of affordable housing which was a goal of the HUD program.

The Transfer Act retains the out-of-school and age requirements that were in the Cranston-Gonzalez Act for YouthBuild, targeting eligible youth who are school dropouts and are between the ages of 16 and 24 years old. The Transfer Act further provides that at least 75 percent of participants must be school drop-outs who are members of low-income families, foster care youth, youth offenders, youths with a disability, children of an incarcerated parent, or migrant youths. In addition,

to ensure that other at-risk youths have access to the program, the Transfer Act includes a 25 percent eligibility exception. This exception permits secondary schools to refer students to a YouthBuild program that offers a secondary school diploma if the program is determined to be a better fit for the youth. The exception also allows youth who have a diploma or GED but test as basic skills deficient to participate in a YouthBuild program.

II. General Discussion of the Rulemaking

We have administered the YouthBuild program, including making grants, since the passage of the Transfer Act. In drafting the Notice of Proposed Rulemaking (NPRM), we relied on the knowledge gained from administering the program, along with the experience gained in developing the WIA Youth Program. Consistent with the Transfer Act, the rule incorporates technical modifications to the YouthBuild program to make it consistent with WIA job training, education, and employment goals. Moreover, the rule authorizes education and workforce investment activities such as occupational skills training, internships, and job shadowing, as well as community service and peer-centered activities. In addition, the rule describes how we will use performance indicators developed for Federal youth employment and training programs to enhance the accountability of YouthBuild programs.

On August 27, 2010, ETA published the YouthBuild NPRM at 75 FR 52671 (Aug 27, 2010). The NPRM explained our main focus is to prepare at-risk youth for employment, although the construction and rehabilitation of affordable housing continues to be a major component of the YouthBuild training program. Therefore, the NPRM increased the emphasis on the education and occupational skills training provided by YouthBuild programs. Specifically, the NPRM proposed that the occupational skills training offered in YouthBuild programs must begin upon program enrollment and be tied to the award of an industry-recognized credential; i.e., the National Center for Construction Education and Research (NCCER), the Home Builder's Institute's (HBI) HPACT curriculum, or the Building Trades Multi-Craft Core curriculum. Additionally, the NPRM placed emphasis on coordinating training with registered apprenticeship programs, which will allow participants to enter such programs upon exiting YouthBuild.

The NPRM proposed the use of some YouthBuild funds to pay for supervision and training costs to allow participants to develop skills and obtain work experience in the rehabilitation or construction of community buildings and other public facilities. The NPRM advanced these and other new activities to better assist at-risk youth in preparing for employment.

Finally, in the NPRM, we solicited comments on whether YouthBuild should continue to focus on construction skills training or whether skills training should be expanded to other industry areas.

Overview of the Comments Received on the NPRM

The comment period for the NPRM was open from August 27, 2010 to October 26, 2010. We received twenty-nine comment letters in response to the NPRM. The commenters represented a broad range of constituencies for the YouthBuild program, including seven private citizens, five local and community employment and training organizations, two union organizations, five local YouthBuild programs, two local governments, two Federal agencies, three state governments, one advocacy organization, and two individuals with YouthBuild U.S.A.

The comments raised a variety of concerns, some general and some pertaining to specific provisions or specific proposals. After reviewing the comments, we have modified some provisions and retained others as originally proposed in the NPRM. The issue most frequently raised in the comments concerned the NPRM's specific proposals for various program requirements. Most of these comments were requests for clarification about specific program requirements, such as the time allowed for follow-up services for program participants. Several commenters also addressed the question whether the YouthBuild program should continue to focus on construction skills training or if we should allow other occupational skills training in YouthBuild.

We received several comments that were beyond the scope of the proposed rule and included issues with the YouthBuild Solicitation for Grant Applications, published at 73 FR 58653 (October 7, 2008), and individual State laws. These are issues that cannot be resolved or implemented through this regulatory process or are not within the Department's purview. Additionally, comments submitted in a manner inconsistent with the specific directions of the NPRM or submitted after the comment period closed were not considered.

III. Section-by-Section Review of the Final Rule

When developing this final rule the substantive issues raised by the comments were taken into careful consideration. These issues and our reasons for developing the final rule as it is written are discussed below.

Subpart A—Purpose and Definitions

Sections 672.100, .105, and .110 deal with the purpose, scope, and definitions related to the YouthBuild program. Significantly, under § 672.100, we emphasize that YouthBuild is a workforce development program in addition to a program that aims to increase the amount of affordable housing for low-income and homeless individuals and families. This emphasis implements one of the primary goals of the Transfer Act, which, in moving the administration of YouthBuild from HUD to the Department, was to make YouthBuild a program that focuses on occupational skills development.

What is YouthBuild? (§ 672.100)

This section describes the YouthBuild program as administered by the Department. One commenter requested either an expansion or clarification of the description of the YouthBuild program. The commenter suggested changing the description of the program as being for secondary school dropouts, to read ''at least 75 [percent] of whom have left school without a diploma.'' The commenter states this would make it clear at the outset that not all YouthBuild participants must lack a High-School diploma.

We believe that § 672.300 clearly articulates who may be an eligible participant by stating that at least 75 percent of participants must lack a High-School diploma, while no more than 25 percent of participants may have a diploma but are still basic skills deficient as defined in section 101(4) of WIA. Nevertheless, we have accommodated the commenter's concern by adding the words ''most of whom'' to make clear that there are some YouthBuild participants who need not be high school dropouts.

What are the purposes of the YouthBuild program? (§ 672.105)

This section details the goals of the YouthBuild program. We received four comments from two commenters on this section. We changed § 672.105(a) by emphasizing that YouthBuild participants should obtain education and training for high-demand and local

in-demand jobs to achieve economic self-sufficiency. We believe this change better reflects WIA Sec. 173(A)(a) which states that the purpose of YouthBuild is to provide education and employment skills for participants for occupations in demand. One commenter made a recommendation to insert the following sentence, ''[t]o assist participants in overcoming barriers, the program provides a variety of case management and counseling supports, as well as training in life skills'' in § 672.105(a). The commenter suggests that the purpose for the change is to appropriately emphasize key components of successful programs. We agree that case management and counseling are key components to a YouthBuild program but we do not think it is appropriate to highlight these components in this section which is a broad statement of the program's goals. Instead, these services are more appropriately addressed in the discussion of § 672.210.

The commenter also recommended changing § 672.105(a)(3) from the goal being to ''reduce the rate of homelessness in communities with YouthBuild programs,'' to the goal being ''to expand the supply of permanent affordable housing * * *'' The commenter believes the change is more accurate and is a direct reflection of the Transfer Act. We agree with the commenter and have changed the language at § 672.105(a)(3) to more accurately reflect the language of the Transfer Act.

The other commenter requested that the final rule articulate the importance of recruiting young women and young women with children as provided in the Transfer Act. The commenter went on to explain that special efforts to recruit young women into YouthBuild are essential to increasing their participation because few women are exposed to the construction trades and other non-traditional occupations while they are in school.

We agree with the commenter about the importance of recruiting young women and participants with children but we don't feel it is appropriate to amend the statement of goals. Instead, we will consider the effort to recruit, or plans to recruit young women put forth by YouthBuild programs and applicants as an important factor in the Solicitation for Grant Application selection process.

What definitions apply to this part? (§ 672.110)

This section explains the definitions applicable to this final rule. We received comments, which we discuss below, on several of the definitions. Those definitions on which we did not receive comments have been adopted as proposed.

Alternative School

In part, the proposed definition of ''alternative school'' reads, ''An 'alternative school' must be recognized by the authorizing entity designated by the State, must award a high school diploma and, must be affiliated with YouthBuild programs. * * *'' One commenter pointed out that some YouthBuild programs are recognized by authorizing entities but only offer GEDs while other YouthBuild programs offer GEDs and High School Diplomas and are recognized by authorizing entities. The commenter goes on to ask what the impact of these regulations would be on the alternative school status of those YouthBuild programs that offer GEDs and High School Diplomas.

We have changed the rule so that schools offering both a high school diploma and a GED, when authorized by the appropriate entity, can be included as an alternative school. For the purposes of participation in a sequential services strategy, schools that offer only High School Diplomas will continue to be considered alternative schools. In order for a YouthBuild Program's academic component to meet the definition of a ''sequential service strategy,'' as defined in § 672.110, the program's alternative school must award a high school diploma and not a GED. This allows YouthBuild programs with alternative schools to enroll out-of-school youth participants into their alternative school prior to enrollment into their YouthBuild program, while enabling them to maintain their out-of-school youth eligibility at the time of their enrollment into the YouthBuild program as long as it is part of a ''sequential service strategy.'' This flexibility is only granted to YouthBuild programs with alternative schools that award high school diplomas and not GEDs because research establishes that individuals who receive a high school diploma have a higher long-term earning potential than individuals who receive a GED. GEDs are also generally achieved by participants within the first year of service. The flexibility for YouthBuild grantees to use a ''sequential service strategy'' is an incentive for more programs to move towards high school diploma granting academic components, and supports earlier dropout recovery of future YouthBuild participants and prevents programs from having to drop youth out of their program so they can then reenroll as an out-of-school youth.

Community or Other Public Facility

We received several comments seeking to expand the definition for ''Community or Other Public Facility.'' The NPRM explained that ''community or other public facility'' means those facilities which are publicly owned and publicly used for the benefit of the community. Examples include public-use buildings such as recreation centers, libraries, public park shelters, or public schools. This term may also encompass facilities used by the program but only if the facility is available for public entry and use.

One commenter wanted the definition to include churches or faith-based facilities. Another commenter agreed that buildings owned by faith-based, non-profit organizations should be included in the definition. Another commenter also suggested that if the definition of community and public facilities could be expanded, it would increase opportunities for employment training and community benefits. The commenter further stated that proposed projects should be individually evaluated based on several factors including the extent of rehabilitation or construction required to make the project habitable, the project's likelihood to provide comprehensive training value to young people, and the project's projected value to the broader community, regardless of ownership or public use. Two other comment letters contend that since the Transfer Act does not state that ''community or other public facilities'' must be publicly owned, the definition should include privately held non-profit facilities.

We agree with the commenters and revise the definition of ''community or other public facilities'' to include privately owned non-profit facilities, including facilities owned by faith-based organizations, as well as publicly owned facilities, as long as those facilities are available for public entry and used for the benefit of the public. While grant funds can be used in the rehabilitation or construction of buildings owned by faith-based organization, funds may not be used to rehabilitate or construct a facility, or portion of a facility, that will be used for religious purposes.

Any work done by YouthBuild participants on a community or public facility must be directly related to training for YouthBuild participants and follow the relevant Office of Management and Budget's (OMB) cost principles for grants. (OMB Circulars A–87, 2 CFR part 225 and A–122, 2 CFR part 230). Under these cost principles, any activity funded with grant funds

that would result in the Department obtaining an equity interest in equipment, buildings, or land, is unallowable. Of particular relevance to the YouthBuild program, under Circulars A–87 and A–122, capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable. 2 CFR part 225, Appendix B, § 15(b); 2 CFR part 230, Appendix B, § 15(b). While Circulars A–87 and A–122 permit these costs with advance approval from the Department, as a matter of policy the Department will not approve these costs in order to avoid taking an equity interest in the relevant capital asset (i.e.: land, building, and equipment).

However, costs for normal maintenance and upkeep that does not add to the value or prolong the useful life of land, buildings, or equipment are allowable costs not subject to pre-approval by the Department. 2 CFR part 225, Appendix B, § 25; 2 CFR part 230, Appendix B, § 27.

The NPRM contemplates that buildings privately owned by non-profit grantees fall within the definition of ''community or other public facilities.'' We do not think that there is any reason to distinguish between grantee and non-grantee owned non-profit facilities that are privately owned, thus we agree with the commenters that the definition should be expanded. However, proposed projects on privately owned facilities, including facilities owned by faith-based organizations, must meet the public entry and use restrictions outlined in the definition and the cost principles already discussed.

Homeless Individual

We received no comments on the definition for ''homeless individual''. However, the definition for ''homeless individual'' from the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) provided in the NPRM was amended before publication of this final rule by sec. 1003(a)(2) of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009. 42 U.S.C. 11302(a). As a result, we are changing the rule text by removing the detailed definition of ''homeless individual'' to cite only the McKinney-Vento Homeless Assistance Act in the final rule to incorporate any future changes in the definition. Therefore, for the purposes of YouthBuild, the definition of ''homeless individual'' at Section 103 of the McKinney-Vento Homeless Assistance Act applies.

Indian and Indian Tribe

One commenter described the definition of ''Indian''' and ''Indian tribe'' as too limiting and potentially offensive to Native Alaskans. The commenter suggested that we replace the term ''Indian and Indian Tribe'' with ''American Indian/Alaska Native. We appreciate the sensitivity explicit in the commenter's suggestion. However, in this instance we are constrained from changing the term because the final rule reflects the Transfer Act's adoption of the definitions of these terms from sec. 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)).

Low Income Family

In the NPRM, we defined ''Low-Income Family'' as a family whose income does not exceed 80 percent of the median income for the area unless the U.S. Secretary of Labor (Secretary) determines that a higher or lower ceiling is warranted. This term is defined in the Transfer Act. One commenter wanted the rule to increase the median income level from 80 percent of the median income for the area to 120 percent of the median income for a low-income family, due to the difficulty some YouthBuild programs are having finding low-income homebuyers.

We have determined that the definition of ''Low-income family'' will remain unchanged in the rule to mean a family whose income does not exceed 80 percent of the median income for the area unless the Secretary determines that a higher or lower ceiling is warranted. The term ''low-income family'' was taken from United States Housing Act of 1937 (42 U.S.C. 1437a(b)(2)) and is a widely recognized term and metric. However, at the discretion of the Secretary, we may consider temporary increases in the median income level based on economic conditions. If such a temporary increase is determined to be necessary it will be done so in future SGAs or through guidance.

Further, we have made several non-substantive changes to this definition to improve readability.

Migrant Youth

We received one comment on the definition of ''Migrant Youth.'' The commenter stated that the proposed definition was too limiting because it did not include workers affiliated with the seasonal fishing industry. We understand the commenter's concern with the possible limitations of the definition of ''migrant youth.'' Because YouthBuild is a WIA-funded program, we first considered using a definition for ''Migrant Youth'' that incorporates the WIA definition for migrant farmworker from the National Farmworker Jobs Program found at WIA Sec. 167(h)(3). Under WIA, a ''Migrant seasonal farmworker'' is a seasonal farmworker whose agricultural labor requires travel to a job site such that the farmworker is unable to return to a permanent place of residence within the same day. (WIA sec. 167 (h)(3)(A)(4)(A)). However, we believed that using the definition found in the statute limited the number of potential program participants. Accordingly, we chose to adapt our definition of ''Migrant Youth'' from the broader definition of ''migrant farmworker'' found in Farmworker Bulletin 00–02, which relates to eligibility in the Migrant Seasonal Farmworker Youth Program, and expands on the definition of ''migrant seasonal farmworker'' found in WIA. Using this broader definition allows a larger population of potential YouthBuild participants to be served by the program. The definition of ''migrant farmworker'' found in Farmworker Bulletin 00–02 uses the North American Industry Classification System (NAICS) codes to determine whether or not a worker is a ''migrant farmworker.'' The definition of ''migrant farmworker'' in the Farmworker Bulletin excludes workers whose work is classified as ''aqua-culture,'' which includes the seasonal fishing industry. In addition, using the definition of ''migrant seasonal farmworker'' from Farmworker Bulletin 00–02 allows for consistency throughout ETA programs, as both the National Farmworker Jobs Program and the Office of Foreign Labor Certifications use similar definitions that exclude the seasonal fishing industry. Because we have based our definition on Farmworker Bulletin 00–02, and because that definition does not include workers in the seasonal fishing industry, we have decided not to include seasonal fishing industry workers as part of the definition of migrant youth.

We received no comments on the remaining definitions, and therefore have adopted each as proposed.

Subpart B—Funding and Grant Applications

This subpart deals with the selection process, the funding process, and the application process for potential grantees to apply through an SGA.

How are YouthBuild grants funded and administered? (§ 672.200)

We did not receive any comments on this section. The final rule adopts the regulation as proposed.

How does an eligible entity apply for grant funds to operate a YouthBuild program? (§ 672.205)

We did not receive any comments on this section. The final rule adopts proposed regulation as proposed.

How are eligible entities selected to receive grant funds? (§ 672.210)

This section describes the criteria for selecting grantees. One commenter requested that we offer separate funding for rural programs, urban programs, and new programs as was the case when HUD administered YouthBuild. The commenter maintained that it is difficult for rural programs to compete against urban programs. Additionally, the commenter believed the minimum amount of funds for which a program can apply is an amount too large for smaller YouthBuild programs. We acknowledge the commenter's concerns in that some rural programs may have difficulty in obtaining grant awards because often the suggested minimum amount of a YouthBuild grant award is more than some rural programs need to operate successfully. We believe, however, that the commenter's concerns are addressed in the annual SGAs. When awarding grant funds the Grant Officer considers a variety of factors, including geographic diversity and the need for affordable housing in an area. Additionally, YouthBuild SGAs do not have a minimum level of funding which applicants must request; the minimum amounts in the SGA are only suggested amounts. Applicants may request an amount of funding that is less than the suggested minimum grant award amount.

Two commenters expressed some difficulties in obtaining data addressing the required indicators of need, poverty, unemployment rates, and high school drop-out rates referenced in § 672.210(c). They further related that there is no standardized methodology for calculating unemployment or drop-out rates among States and local communities. The commenters believe this situation makes it unfair to rate applications from different regions against each other.

We understand it may be difficult to obtain data which demonstrates the various indicators of need in § 672.210(c) for different State and local communities. However, contrary to the commenters' assertion, we do not evaluate grant applications by comparing them to one another or measuring them against other grant applications. Each respective YouthBuild application submitted in response to an SGA is rated only against the criteria established in the SGA. Furthermore, we do not mandate that applicants obtain data which demonstrates the various indicators of need from specific sources. YouthBuild applicants are free to use whatever source they prefer for data showing indicators of need as long as they can demonstrate in their grant application the validity of the data and its accuracy in showing he community's need for the YouthBuild program.

One commenter suggested adding ''counseling and case management'' to § 672.210(d) which reads, ''[t]he commitment of an applicant to provide skills training, leadership development, and education to participants.'' The commenter contends that without the commitment of personal support for the individual participant offered by YouthBuild programs through counseling and case management, the ability of participants to achieve the desired outcomes would be dramatically reduced.

We agree that the offer of counseling and case management is important for participants' success in YouthBuild. We also believe that these services are being provided by YouthBuild programs as part of their commitment to provide skills training, leadership development, and education to participants. Furthermore, § 672.310(a)(2) details some of the eligible activities, including counseling services, that may be funded in YouthBuild programs. However, we agree with the commenter that counseling and case management should be included as a basis for selection in the grant application process. Accordingly, we have added counseling and case management to § 672.210(d) as part of the required selection criteria.

Two commenters proposed new language to be added to § 672.210(e). Proposed § 672.210(e) establishes that one, of many, selection criteria is, ''[t]he focus of a proposed program on preparing youth for postsecondary education and training opportunities or in-demand occupations in the construction industry.'' The commenters proposed that this section be changed to read, ''[t]he focus of a proposed program on preparing youth for postsecondary education or jobs within their communities, including high-demand occupations and entrepreneurship opportunities.'' The commenters stated the reason the change is necessary is because in rural and Native communities, ''demand'' occupations may not be reflected accurately in data due to the small size of many employers. Further, the complete absence of products and services in a community often reflects need but this need is not captured by actual employment data. One of these commenters suggests that these factors place programs in these communities in the awkward position of encouraging young people to leave their communities, and also may encourage young people to apply for jobs for which they have no transportation or cannot afford the transportation to access.

We agree with the commenters' concern. The selection criteria and the process through which grantees are selected, as stated at § 672.210(e), is specifically described in sec. 173A(c)(4)(E) of WIA. Section 173A(c)(4)(E) states that applicants will be judged based on ''the focus of a proposed program on preparing youth for occupations in demand or postsecondary education and training opportunities.'' Therefore, we have amended the text in § 672.210(e) by adding the word ''local'' to address the commenters' concerns about demand occupations.

Two commenters noted that rural and Tribal programs are disadvantaged by the criteria in § 672.210(f)(1) because they have limited partnership choices which affect the applicant's performance under the selection criterion that deals with an applicant's demonstrated ability to enter partnerships with various entities. One commenter went on to explain that the lack of One-Stop Centers and other workforce investment systems in rural areas and Tribal lands make it difficult for programs in these areas to seek partnerships with those entities as required in § 672.210(f)(1). To remedy this, the commenter suggested that Job Corps be added as a specific workforce investment partner in the rule.

We are aware that rural and Tribal programs may have limited partnership choices and that Job Corps would make a good partner for the YouthBuild program. However, we do not believe it is necessary to specifically mention Job Corps in the text of § 672.210(f)(1) because Job Corps is a One-Stop partner and applicants are already evaluated on the extent to which they propose to coordinate activities with such partners. Therefore, specifically adding in a Job Corps provision to this section would be redundant. To address the issue about potential partners that the commenter raised, we issued Training and Employment Notice (TEN) 50–08, on

June 24, 2009 to provide strategies to YouthBuild Programs on collaborating with Job Corps Programs. The TEN is available at the ETA Advisories Web site at *http://wdr.doleta.gov/directives/attach/TEN/ten2008/TEN50–08acc.pdf*, and is made available to any new YouthBuild-funded programs.

We understand the difficult task of obtaining partnerships, especially for those applicants in rural areas or Tribal lands, this is why the workforce system coordination clause in § 672.210(f)(1) contains the caveat, ''or the extent of the applicant's good faith efforts, as determined by the Secretary, in achieving such coordination''.'' This clause allows the Grant Officer to credit an applicant's effort to obtain partnerships, even if that effort was ultimately unsuccessful.

One commenter suggested that we strengthen in § 672.210(i)(1) through (5) the emphasis on the quality and coordination of the partnerships and the nature of the partnering relationship, rather than on the number of partnerships. The commenter stated that, ''while partnerships are desirable and often essential, both for delivering services and leveraging resources, we see risks in over-emphasizing and incentivizing partnerships as the way to deliver services.''

We believe that we have appropriate measures in place to prevent the over-emphasis on the number of partnerships versus the quality of partnerships in the grant selection process. In our SGAs, YouthBuild applicants are not rated simply on the number of partners, but also must demonstrate the level of commitment, the qualifications, and the abilities of the partners to contribute to participants' success, and the strength and the maturity of the partnership. Therefore, in assessing the selection criteria in § 672.210(i)(1) through (5), we seek to analyze the qualitative aspects of the described partnership and how likely the partnership will contribute to the overall success of a YouthBuild participant.

The same commenter suggested adding the adult justice system to proposed § 672.210(i)(4) which describes the extent to which an applicant should partner with the juvenile justice system, because many of the participants are classified as adults. Additionally, the commenter suggested that we add a paragraph to § 672.210(i)(4) stating that a selection criterion for YouthBuild applicants is the demonstrated service they can receive from partnerships with the adult and juvenile justice system for referrals of eligible participants through diversion or re-entry from incarceration.

We agree with the commenter's two suggestions and have made the suggested changes in the rule, because many possible YouthBuild participants are classified as adults in the justice system. Consequently, it would be the adult justice system that would be able to provide assistance with reporting recidivism rates and referrals of these potential participants. This will enable YouthBuild to better attract participants from its targeted population.

How are eligible entities notified of approval for grant funds? (§ 672.215)

This section describes the process and timeline for notifying a grant applicant of a YouthBuild grant application approval or disapproval.

One commenter recommended the addition of the following: ''The [Department] will establish a threshold level of points required to be eligible for funding, and will make known what was the actual cut-off point for funding, if it was above that threshold as a result of high quality competition, in each round. Upon request the [Department] will provide the specific scores for each proposal and written feedback regarding the weaknesses of the proposal. It will also accept appeals from applicants who can demonstrate after reviewing the scores that a specific error in scoring was made on a technical point, such as whether a particular item of required documentation was provided. If the Secretary determines a correction is warranted, the Secretary may make that correction from subsequent year appropriations.''

We find that these suggestions are unnecessary. As explained in our YouthBuild SGAs, proposals that are timely and responsive to the requirements of the SGA are rated against listed criteria by an independent panel comprised of representatives from the Department, HUD, the U.S. Department of Justice, the U.S. Department of Health and Human Services, and other peers. The ranked scores serve as the primary basis for selecting applications for funding, in conjunction with other factors such as: urban, rural, and geographic balance; whether the areas to be served have previously received grants for YouthBuild programs; the availability of funds; and which proposals are most advantageous to the Department. Also in the SGAs, we state that, upon request, we provide feedback to applicants on portions of their specific application we believe can be improved. However, we do not provide guidance on any portions that we believe are strengths in an application. We take this approach because we understand that what works for one grant applicant may not work for other grant applicants that have different challenges and needs that YouthBuild may help in addressing. Further, we do not provide a threshold for scores in the regulation or in the current SGAs because the numerical scores are only one part of the overall final award decision, other factors (listed above) are also brought into consideration. Also, the Department has routinely received enough high scoring applications submitted in response to SGAs, thus there is no need to set a threshold score to ensure that enough high quality grants given out. In addition, an applicant has a right to appeal the decision on their grant application under sec. 186 of WIA. Finally, the Secretary reserves the right to make any corrections she believes necessary in awarding grants for YouthBuild.

Subpart C—Program Requirements

Subpart C deals with eligibility determinations of YouthBuild program participants, required program activities, designated minimum timeframes for certain activities, and services that must be carried out by programs.

Who is an eligible participant? (§ 672.300)

Section 672.300 implements sec. 173A(e)(1) of WIA. This section defines who is eligible to become a YouthBuild participant. Specifically, § 672.300(a)(1) through (3), implementing sec. 173A(e)(1)(A) of WIA, states that an individual eligible for YouthBuild participation must be between 16 and 24 years old, a school dropout or a dropout who is enrolled in an alternative school as defined § 672.110, and either is a member of a low-income family, in foster care, a youth offender, disabled, a child of an incarcerated parent, or a migrant youth. Under sec. 173A(e)(1)(B) of WIA no more than 25 percent of the participants in a particular YouthBuild program may be individuals that do not meet the criteria described above, provided that they meet one of the exceptions listed in sec. 173A(e)(1)(B) of WIA. These exceptions are set out in § 672.300(b) of the final rule.

One commenter suggested increasing YouthBuild's current exception in § 672.300(b)(1) for participants who have a high school diploma or GED and an educational deficiency from 25 percent to 40 percent, because this would aid recruitment and broaden YouthBuild's participant base, and enable YouthBuild programs to move even more participants more quickly

into employment, enhancing placement rates. While this suggestion would help broaden the number of potential eligible participants, the 25 percent cap is mandated by the statute. Section 173A(e)(1)(B) of WIA states that no more than 25 percent of YouthBuild participants in a particular program may be individuals who do not meet the educational deficiency requirements in sec. 173A(e)(1)(A)(ii) and (iii) of WIA.

One commenter suggested that the rule include guidance on what documentation is acceptable for determining the eligibility of a participant.

We do not view the regulations as the proper place to provide detailed operational guidance. The regulations set the general rules governing the YouthBuild program and we provide administrative guidance to provide the detailed operational procedures. The type of documentation we accept to establish participant eligibility is broad, and often changing due to changes made at the Federal, State, or local level to the forms required, changes in the relevant legal definitions at the Federal, State, and local level, or because of other changes to the documentation that we currently accept. By including this information in the regulation, we could not easily adapt to the changes described above and could not make the changes that we believe are necessary in a timely fashion. In addition, upon award of a YouthBuild grant, each grantee is provided with a Department-issued YouthBuild handbook that helps grantees understand what documentation is acceptable to be used to determine a participant's eligibility. This handbook also provides eligibility guidelines for grantees to use when selecting participants. Finally, each grantee is required to have in place written policies it will use to determine the eligibility status of a perspective participant.

Another commenter recommended that rather than calling the young people ''dropouts,'' the regulation should describe them as young people who left school without a diploma. The commenter reasoned that language used to describe the participants should carefully avoid labels of all kinds, and in many quarters ''dropout'' has a negative connotation. We understand the commenter's concerns about labeling participants with a word that could have a negative connotation. However the term ''drop out,'' as currently used in WIA sec. 173A(e)(1)(A)(iii) and as defined in WIA sec. 101(39), is a clear, fair, commonly-used and concise term used to describe the actions of youth who voluntarily left high school without a diploma.

Are there special rules that apply to veterans? (§ 672.305)

We did not receive any comments on this section. The final rule adopts the regulation as proposed.

What eligible activities may be funded under the YouthBuild program? (§ 672.310)

This section implements sec. 173A(e)(3) and 173A(c)(2)(A) of WIA, which outline new education and workforce investment activities. These activities, newly permitted under the YouthBuild program, consist of postsecondary education services and activities, including tutoring, study skills training and dropout prevention activities; other paid and unpaid work experiences, including internships and job shadowing; alternative secondary school services, occupational skills training, and counseling services and related activities, such as comprehensive guidance and counseling on drug and alcohol abuse and referral.

One commenter had a general concern that the wording of § 672.310 may leave some YouthBuild programs and applicants with the impression that it will be at the individual program's discretion as to whether or not they will provide certain services. The commenter is correct that the intent of the regulation is to provide program operators with some discretion over the services they may provide. While a YouthBuild program must offer several required services, we allow some variation in the overall services available in a program because we do not believe that a one-size fits all approach would help programs be successful. We recognize that because YouthBuild is a nation-wide program, there will be differences between the needs and resources between regions and among individual programs. This is not to say that YouthBuild programs can pick and choose services in a vacuum. Grantees must structure programs so that at least 90% of the participants' time is spent on eligible education activities (50%) and eligible workforce investment activities (40%). YouthBuild Federal project officers monitor program progress and work with grantees to make sure that grantees' programs produce positive outcomes for the program and for the participants, while giving detailed information on required activities and allowable activities.

The same commenter stated that Mental Toughness is an important element that contributes greatly to cohesive culture–building, and motivates young people to engage with the program and with each other. Consequently, the commenter recommended that Mental Toughness/Orientation be mentioned in the regulations and that programs be allowed to use their grant funds for this activity. We agree that Mental Toughness can be an important component of a YouthBuild program. Because of its potential positive impact, we issued guidance on Mental Toughness/Orientation (Training and Employment Guidance Letter (TEGL) 14–09 issued on February 25, 2010), which discusses the allowable costs for initial intake or informal interviews with YouthBuild participants to gauge prospective participants and their readiness for the rigors of the YouthBuild program. While we recognize that Mental Toughness can have a very positive impact on programmatic and participant success, we do not feel it is appropriate to mandate this technique to all grantees. Since YouthBuild is a nation-wide program, there will be differences in the needs, resources, and approaches between regions and among individual programs.

One commenter recommended that we clarify that YouthBuild programs are permitted to use grant funds for post-secondary educational training costs where a participant completes secondary education while still enrolled in the program, or where a participant is otherwise ready for post-secondary study. Section 672.310(a)(1)(iv), which mirrors Sec. 173A(c)(2)(A)(iv)(IV) of WIA, provides that counseling and assistance in obtaining post-secondary education and required financial aid is an eligible education activity for grant funds and is available to the participant whether the participant is still in the program or has exited and is receiving follow-up services. The regulation follows the language of the statute. It is an allowable activity under § 672.310(a) for grantees to spend grant funds on post-secondary education costs described in § 672.530(e)(1) and (2). We urge grantees to use these funds reasonably for participants, both during their time in YouthBuild and after they exit and are receiving follow-up services, so that they may assist as many participants as possible with post-secondary education costs such as application fees or fees associated with financial aid. However, grantees have discretion to determine whether to spend grant funds to directly fund the costs of post-secondary education.

Another commenter recommended that funding rules should allow

YouthBuild sites to offer relationship skills training so that participants may learn communication skills and problem solving skills. The commenter believes this will help young people acquire necessary skills and keep jobs they may get with the skills learned through YouthBuild participation. We agree with the importance of offering relationship skills training for YouthBuild participants. Many of the young people who eventually enter YouthBuild lack the communication skills needed to build strong interpersonal and work-centered relationships. In our experience, the development of these ''soft'' skills is critical to participant success in the workforce once an individual leaves YouthBuild. Therefore, at § 672.310(a)(3), we provide for employment and leadership skills training to encourage positive social behaviors, which includes the type of training suggested by the commenter.

One commenter wanted the final rule to offer participants a stipend for transportation because it would aid in their ability to participate successfully in a YouthBuild program. The commenter stated that many low to very low income individuals lack dependable transportation and that providing participants with a stipend for public transportation would improve successful outcomes. We agree with the commenter's understanding of the importance of transportation to the success of participants. The NPRM, at § 672.310(a)(4) would permit programs to use grant funds to provide supportive services, which includes aiding participants in obtaining transportation, including public transportation, to and from YouthBuild locations and worksites because it is considered a supportive service under WIA sec. 101(46). We have carried this provision into the Final Rule.

Another commenter wanted the final rule to provide guidance on how programs are authorized to provide funds for childcare. Childcare is another supportive service available under § 672.310(a)(4).

One commenter stated that the 10 percent restriction on grant funding in § 672.310(c)(2) should be increased to allow for additional exposure to other sectors of the construction industry beyond residential construction. We are constrained by WIA sec. 173A(c)(2)(C), which states that no more than ten percent of grant funds may be used for the supervision and training for participants in the rehabilitation or construction of community and other public facilities.

What timeframes apply to participation? (§ 672.315)

We received two comments about the amount of time a participant is permitted to be enrolled in the YouthBuild program. One commenter wanted to know if there was an exception to the requirement that participants must be offered full-time participation for a period of at least six months and not more than 24 months. Section 173A(e)(2) of WIA provides no exception to this requirement. Therefore we cannot permit an exception in the final rule.

The other commenter requested that the rule discourage programs from establishing their program length at the minimum level because many YouthBuild students' incoming reading and math skill levels and workforce readiness are typically so limited that YouthBuild participation and program engagement longer than six months is required to help improve these skills. The same commenter went on to recommend that the rule make it clear that every enrollee may participate for up to 24 months, or for however long the program receives funding, whichever is shorter.

The suggested change is not needed. Because we are focused on outcomes within the requirements of the Transfer Act, we work with programs to ensure participants' success regardless of the time spent in a YouthBuild program. We understand that the various programs and participants face different challenges and, therefore, we encourage programs to work towards successful outcomes for participants, whether occurring after six months or longer. In addition, § 672.325 requires that each participant exiting a YouthBuild program be provided follow-up services for a minimum of nine months to assist participants in obtaining or retaining employment, or applying for and transitioning to post-secondary education or training. Therefore, each participant who exits a YouthBuild program, even after only six months, receives additional services to help ensure a successful transition into employment or post-secondary education.

What timeframes must be devoted to education and workforce investment or other activities? (§ 672.320)

This section explains the required structure of YouthBuild programs so that participants in the program are offered specific educational and related services and activities during at least 50 percent of their participation time, workforce investment activities during at least 40 percent of their participation time, with the 10 percent time remaining designated for YouthBuild participants to conduct leadership development and community service activities, or additional workforce investment activities or educational activities. The 40 percent workforce investment activities participation time is a new requirement under sec. 173A(e)(3)(B) of WIA.

We received two comments on the 10 percent time limit designated for YouthBuild participants to conduct construction skills training and construction on affordable housing and public facilities. One commenter suggested that YouthBuild programs be permitted to use the 10 percent time limit for YouthBuild participants to work on community projects to include the opportunity for participants to work on commercial projects. Both commenters stated that such a broadening of the use of the additional time could serve to bring YouthBuild programs and Registered Apprenticeship programs into closer mutual understanding and alignment and allow additional exposure to these other sectors of the construction industry.

We agree with the commenter that permission to work on commercial projects would expose participants to other sectors of the construction industry. Therefore, we will allow YouthBuild participants to work on commercial projects as long as those commercial projects directly involve the building of affordable housing for low income and homeless families and individuals. One of the goals of the YouthBuild program, as articulated in sec. 173A(a)(4), is to increase the amount of permanent affordable housing for homeless individuals and low-income families. Therefore, due to the limited amount of time for YouthBuild participants to do construction, coupled with our goal of increasing affordable housing for homeless individuals and low-income families, we will permit participants to work on public facility-based projects and commercial projects, as long as those commercial projects are building affordable housing.

YouthBuild Programs May Offer Other Occupational Skills Training

In response to comments solicited in the NPRM, we have determined that YouthBuild programs may offer participants other occupational skills training besides construction skills training. Each YouthBuild program is required to offer construction skills training, but participants do not need to

complete construction skills training as a prerequisite to engage in other occupational skills training.

In addition, we will continue to require YouthBuild programs to provide community service and leadership development opportunities for every YouthBuild participant. We expect that, when possible, YouthBuild programs will align community service projects and leadership development activities with the participant's occupational training and will provide participants with an opportunity for community service relevant to their training, allowing participants to use their skills and training to serve their communities. For example, relevant community service opportunities for a participant pursuing health care career training might include volunteering at a local clinic or volunteering to educate the community about preventative health care. Other current examples include participants volunteering at a community food pantry, tutoring younger youth, participating in a graffiti removal campaign, cleaning a city park, or organizing and speaking at voter registration drives.

These community service opportunities should intend to address real needs in the community. It is expected that participants will play a key role in the design, selection, and implementation of service projects. Additionally, participants are encouraged to perform additional community service or volunteer in local non-profit organizations independent of the YouthBuild program.

We discuss the options we considered for expanding occupational skills training beyond construction skills training in detail below.

Options Considered for Expanding YouthBuild Training for Participants

In the NPRM, we explained that current grantees have expressed an interest in expanding their program training beyond construction to other occupational skills training because YouthBuild programs have difficulty in placing participants in the construction industry when demand for construction workers in a local area is low. Additionally, we learned from grantees that many youth can benefit from the YouthBuild program, but are not interested in ultimately entering careers in the construction industry. Because of these concerns, we asked for comments in the NPRM on whether YouthBuild should continue to focus on construction skills training or if the skills training should be expanded to other industry areas. *See* 75 FR 52671, 52676 (Aug. 27, 2010).

In response, we received fourteen comments on the issue of whether to allow YouthBuild programs to provide occupational skills training in addition to construction skills training. One comment was outside the scope of this rulemaking. Ten commenters stated that we should allow programs to focus on other occupational skills training besides construction. Three commenters wanted to keep the focus of occupational skills training on construction in YouthBuild programs.

Based on our analysis of the comments, we developed three options. The first option was to maintain the current program approach which is to allow construction skills training only. The second and third options both involved allowing other occupational skills training in YouthBuild besides construction. The second option would require some construction skills training as a prerequisite for participants to undergo other occupational skills training. The third option allowed participants to do other occupational skill straining without first engaging in construction skills training.

Option 1: Allow Construction Skills Training Only

Three commenters advocated allowing only construction skills training in YouthBuild. One commenter stated that it was important to support youth who have the technical skills and industry-recognized credentials to fill future jobs in the construction industry. This commenter went on to suggest that YouthBuild participants should be helped to understand that many skills acquired through YouthBuild constructions skills training are transferable to other industries.

Another commenter supported maintaining construction skills training because the growing U.S. population and the aging building environment in the U.S. will combine to drive demand for construction workforce development efforts like YouthBuild. This commenter also stated that the increasingly complex skills necessary for construction due to the energy efficiency and sustainable construction movement will drive demand for programs like YouthBuild. The commenter also addressed the benefits of using construction skills training in YouthBuild by explaining that it provides a step-by-step learning opportunity with well-defined knowledge benchmarks. The commenter explained that once construction skills were learned, the participant could immediately apply this knowledge in the participant's non-construction work experiences. The commenter also stated that through construction skills training, YouthBuild participants could see tangible results of their training. Furthermore, the commenter felt that YouthBuild participants would be better prepared to address home maintenance or repair issues themselves through construction skills learned in training. Finally, this commenter addressed the statement made in the NPRM that many YouthBuild participants are not interested ultimately in entering construction careers. The commenter said that participants are not limited to placement in construction occupations and that plans targeting the participant's ultimate career goal could be part of an individual's ''placement plan''.

The third commenter in support of only construction skill training stated that from personal experience in operating a YouthBuild program for more than a decade, the commenter has found that participants may discover an interest in careers other than construction as a result of construction skills training in YouthBuild. The commenter also stated that emphasizing construction skills training enables programs to teach a work-ethic, provide hands-on training in a demand occupation that may lead to apprenticeship opportunities, increase the supply of affordable housing for low-income and homeless individuals and families, and promote and assist students interested in other in demand occupations after exiting YouthBuild.

While we agree with many of the commenters' arguments, we have decided not to continue to require YouthBuild grantees to provide only construction skills training for a number of reasons. Sec. 173A(c)(2)(A)(ii) of WIA allows other occupational skills training. Additionally, sec. 173A(a)(1) states that one of the purposes of the program is to enable participants to obtain the skills necessary to achieve economic self-sufficiency in occupations in demand, which may not include jobs in the construction industry in a local area. We agree with the commenters that a program allowing for other occupational skills training besides or in addition to construction skills affords YouthBuild programs and participants more flexibility in matching available training opportunities to participants' interests. This approach also allows programs to try and match skills training with local job market data when appropriate or possible, to develop a program better suited to both the needs of the community and the interests of the participants, which we believe will lead to better employment outcomes for participants.

Option 2: Allow Other Occupational Skills Training But Require Construction Skills Training

Four of the commenters recommended allowing other occupational skills training but stated that construction skills training should remain a core or primary component of YouthBuild training. Three of the commenters recommended that YouthBuild should continue to focus on construction skills training as the primary mode by which participants learn job-related and leadership skills. One of these commenters stated that some programs have identified innovative and unique opportunities to impart in-demand skills to participants including agricultural and forestry skills, technology-based skills like computer repair, cosmetology, and entrepreneurship skills. This commenter further recommended that YouthBuild programs should be provided with an approved list of other occupational skills training based on sound models proposed or implemented by local programs, including rural and Native-serving programs. However, this commenter stressed that construction [skills training] should continue to be the primary mode by which young people learn job-related and leadership skills. The commenter went on to suggest that any other occupational skills training ''track'' should be pre-approved by the Department and should be secondary to construction skills training.

Another commenter supported allowing YouthBuild programs the flexibility to include additional high-demand, service-oriented skills training that would provide access to entry-level jobs and post-secondary placement in promising career tracks. However, the commenter stated that additional occupational skills training should be offered as an enhancement to accompany constructions skills training, not as a replacement for construction as the core element of YouthBuild training. The commenter stated that construction skills training continues to be of value to YouthBuild participants because it is attractive to young men who are underrepresented in youth employment programs. The commenter pointed out that more than 30 percent of YouthBuild graduates enter construction jobs and that construction careers should recover as green building expands. Finally, the commenter asserted that Public Housing authorities seek to hire disadvantaged youth to ''green'' public housing, and construction companies will hire youth with criminal records who have gotten back on track.

We understood these four comments as advocating an approach that would make construction skills training a required element for all YouthBuild participants. While we appreciate the approach these commenters recommend, we have determined that we will not require YouthBuild programs to make construction skills training a prerequisite for other occupational skills training. We agree with the commenters that construction skills training is important to YouthBuild because it is a vehicle that allows programs to teach transportable skills sets to participants while imparting them with experiences in team work in a community service context. We want to make it clear that, based on sec. 173A(c)(2)(A)(i) of WIA, YouthBuild programs have to make construction skills training available as a part of every program. However, when possible, we believe that participants, working with YouthBuild administrators and educators, should able to make a decision about the occupational skills training they want to undertake. Feedback received from several YouthBuild programs suggests this approach, matching training opportunities based on local, in-demand jobs with participants' interests, will lead to better educational and job placement outcomes. We will work with YouthBuild programs to develop innovative job training programs as one commenter suggested.

Option 3: Allow Other Occupational Skills Training Without Requiring Construction Skills Training

Six commenters recommended that YouthBuild programs should be allowed to train participants in other occupational skills besides construction without first going through construction training.

Of the six commenters that recommended a change from construction skills training to other occupational skills training, four of these commenters cited the depressed construction industry labor demand as a reason to expand the skills training in YouthBuild. Two of these commenters went on to explain that limiting skills training in YouthBuild to construction work harms existing skilled workers by reducing their ability to find a job in a time of high unemployment in the construction industry since there is a surplus of construction workers seeking limited job opportunities.

Another commenter stated that workforce training in construction does not offer participants useful employment skills to enter the labor market in communities where there are few or no jobs in construction. This commenter explained that allowing YouthBuild programs to tailor the training offered to more closely mirror employment opportunities available within local labor markets would increase the number of participants who successfully achieve job placements after completion of the program.

Additionally, three of the commenters cited the lack of participant interest in construction skills training as a basis for supporting other occupational skills training. Another commenter stated that, in one particular YouthBuild program, most female students, when asked, preferred a different career track than construction. One commenter stated that the heart of YouthBuild is a project-based learning environment and that construction skills training is simply one method of conducting it. Furthermore, the commenter believed that because participants' needs, interests, and abilities may not support construction skills training, grantees should be given flexibility to train young people for any high demand field, as long as programs can demonstrate use of an effective project-based learning environment. This commenter stated that what is essential to the YouthBuild program is that participants' experiences in YouthBuild include hands-on training that meet real community needs in a team-based setting.

In response to the comments received, we have carefully considered the issue of whether to expand the skills training offered by YouthBuild from construction skills to other occupational skills training. As discussed, we have determined that we will allow other occupational skills training in YouthBuild programs, because we believe that allowing programs to be able to match job training opportunities with local, in-demand jobs will lead to more successful employment outcomes for YouthBuild participants. This will also allow programs, when possible, a better way to match training opportunities with participants' interests. However, because the Transfer Act made clear that the YouthBuild program continues to be a construction training program, we have determined that YouthBuild programs must continue to offer construction skills training as an element in all YouthBuild programs.

Section 173A(c)(2)(A)(i) and (ii) of WIA permits grantees to use grant funds for workforce investment activities including work experience and skills training in rehabilitation and construction activities and occupational skills training. We have determined,

based on comments received advocating the expansion of the training offered to include occupational skills training and our program administration experience, that allowing other occupational skills training will help YouthBuild programs provide more successful job placement outcomes and secondary schools placements for program participants. As we have learned from the most recent recession, allowing only construction skills training makes job placement especially difficult for YouthBuild participants during downturns in the construction industry. Also, we believe that this approach will enable programs to take innovative approaches to providing training opportunities that may benefit more participants, especially female participants who many commenters pointed out do not, ultimately, pursue construction careers.

In addition, sec. 173A(c)(3)(B)(i) and (v) of WIA require grant applications to include information about the local labor market, including projections on career opportunities in growing industries and descriptions of educational and job training activities that will prepare participants for employment in in-demand occupations in local labor markets. We believe that allowing other occupational skills training in YouthBuild in addition to construction, especially for local in-demand occupations such as healthcare, ''green'' jobs, and information technology allows the Department and grantees to better achieve the purposes of the Transfer Act.

We will work to ensure that the other occupational skills training should lead to some benchmarked outcome such as a nationally recognized certificate or certification, an associate degree, or a recognizable skills achievement that will assist the participant in pursuing a sustainable career pathway. We will provide further guidance on this issue as necessary.

While we believe that occupational skills training can be a valuable part of any YouthBuild program, we stress that construction skills training remains a mandatory offering for all YouthBuild programs. Construction skills training is a project-based, easily benchmarked method for teaching occupational and teamwork skills that are transferable to virtually any part of the country. As we discussed in the NPRM, YouthBuild creates a sense of self-worth for its participants by providing job skills training in the construction industry and highlighting the important role that each individual can have on community development and engagement. In addition, youth can witness their success and contributions through the rehabilitation and construction of affordable housing for homeless individuals and families and low-income families. This provides a sense of accomplishment that many participants will experience for the first time through a YouthBuild program.

Other Comments

Another commenter suggested changes to § 672.320(a) and (b). The commenter felt the language in paragraphs (a) and (b) could lead to the misunderstanding that a program might be out of compliance if a participant leaves the program before actually participating in education or workforce investment activities at the specified percentages. The commenter pointed out that the operative word in the statute is ''offered'' and argued that programs should not be penalized for the actual levels of participation that are demonstrated by participants who do not complete the program. Finally, the commenter suggested modifying these paragraphs to read: ''(a) Eligible education activities * * * during at least 50 percent of the program cycle in which they have enrolled;'' and ''(b) Eligible workforce investment activities * * * during at least 40 percent of the program cycle in which they have enrolled.''

We believe the language as written is sufficient to avoid any unfair penalties for non-compliance. The current language in § 672.320(a) and (b) focuses on the services that participants are offered during the time they participate in the program because it is the structure of the program and not participant activity in those services that governs compliance.

What timeframes apply for follow-up services? (§ 672.325)

This section requires that follow-up services be provided to YouthBuild participants for a period of not less than 9 months but no more than 12 months after participants exit a YouthBuild program. One commenter wanted clarification whether the rule required that all participants be provided follow-up services or if only those participants that achieve placement were to be provided follow-up services. All participants that exit the program must be provided follow-up services, whether or not they achieve placement. The text of the Final Rule has been changed to clarify this provision.

Another commenter suggested that the follow-up period be no less than six months with the cap on follow-up periods being the end of the grant period. The commenter felt that some YouthBuild programs have excellent post-exit follow-up services, and that some participants require more intensive follow-up services. Similarly, another commenter wanted to extend the period of follow-up for up to two years. We agree that some participants need intensive services. However, the length of time allotted for follow-up services is set by law in sec. 173A(c)(2)(A)(vii) of WIA at a maximum of 12 months. Additionally, the 9 month minimum for follow-up services is essential for measuring programmatic outcomes. Specific outcomes for the program are measured in 3 quarter (or 9 month) increments. For participants and programs to be measured properly throughout their time in YouthBuild, a minimum 9 month follow-up period is required by the common performance measures.

Subpart D—Performance Indicators

Subpart D deals with the required performance indicators for grants, required levels of grant performance, grant reporting requirements, and grant reporting due dates.

What are the performance indicators for YouthBuild grants? (§ 672.400)

This section explains the required indicators, such as certificate attainment, that must be reported by YouthBuild grantees.

One commenter recommended that OSHA–10, First-Aid/CPR, Weatherization Tactics, and the 48 hour HAZWOPER certificates all be considered recognized credentials and counted towards program performance. Another commenter asked about other industry-recognized credentials, particularly for weatherization and green construction or other green industries that may be applicable to YouthBuild and can be reported in the performance indicators.

We appreciate the time and effort necessary to earn these certificates and the benefits that accrue from them. Credential attainment is a common measure for WIA and other workforce programs. As a result, certifications that may be counted towards program performance must meet the requirements established in TEGL 17–05. This TEGL explains that the parameters for recognized credential are, ''participation in secondary school, post-secondary school, adult education program, or any other organized program of study leading to a degree or certificate.'' The parameters for credentials were further clarified in TEGL 15–10, which says that ''a credential is awarded in recognition of an individual's attainment of measurable technical or occupational

skills necessary to gain employment or advance within an occupation.'' The certificates specifically mentioned by the commenter do not meet the criteria to be considered a credential under TEGLs 17–05 and 15–10.

Examples of industry-recognized credentials in the construction field include the credentials earned through the National Center for Construction Education and Research's program, the Home Builder's Institute's (HBI) HPACT curriculum, and the Building Trades Multi-Craft Core curriculum, are the ones most widely used throughout YouthBuild. Examples of credentials that are recognized in industries other than construction include, Certified Nursing Assistant, Certified Java Programmer, National Institute for Automotive Service Excellence Certificate, Certified Novell Engineer, and industry-recognized licensure. While these lists are not exhaustive, they give a few examples of credentials that would qualify for the performance measures.

What are the required levels of performance for the performance indicators? (§ 672.405)

This section explains that expected levels of performance for each of the common performance indicators are national standards that will be established at a later date and will be provided in separately issued guidance.

Three commenters requested that we consider basing performance level expectations on peer group data, specifically rural, urban and tribal data, and or statewide data or negotiations for other WIA programs, and that accommodations for sustained economic downturn be factored into these expectations in some manner. One commenter suggested that sustained economic distress (which can vary regionally) and urban, rural and tribal data warrant less uniform and more individualized performance level expectations without compromising the goal of continuous improvement in performance. Additionally, according to a commenter, performance measures should be, in part, based on average entrance scores—not just Educational Functioning Levels (levels that measure a defined set of skills and competencies as developed by the U.S. Department of Education, 34 CFR 462.3), and on placement outcomes as well. One of the commenters additionally recommended that all students should be required to meet the outcome measures for literacy and numeracy, but that only the more advanced students should be held to criteria concerning academic or occupational credentials and placement.

We have determined it is not necessary to change the performance measures. In 2006, we issued TEGL No. 17–05, which dealt with Common Measures and performance accountability in ETA programs such as YouthBuild. This guidance set forth one set of measures to be used for common measure performance purposes. Furthermore, this TEGL describes the participant information that must be collected and reported for ETA programs that will be used to assess the performance of grantees under the common measures. We appreciate the commenters' concerns but the purpose a common set of measures that apply across similar programs is to enable us to compare the accomplishments of different programs and to determine which strategies are successful so that we can apply them to improve similar programs.

Developing individualized performance targets based on individual and unique situations would result in performance reports based on varying definitions and methodologies. This would make it difficult both to assess the YouthBuild program as a whole and to determine YouthBuild's impact on the workforce system. Furthermore, since the Department began administration of the YouthBuild program, we have held the program to goals that are higher than the Government Performance Results Act (GPRA) goals. We do not want to lower the expected performance outcomes based on individualized factors because we believe that doing so would be detrimental to YouthBuild participants. YouthBuild programs should strive to meet the performance goals set by the Department to ensure successful post-secondary and job placement outcomes for participants. We believe that these aggregate goals have motivated and will continue to motivate YouthBuild grantees to continue working towards improved performance outcomes. For these reasons, and for the reasons discussed above, we will continue to use the standards announced in TEGL 17–05 that apply to ETA programs such as YouthBuild.

Another commenter stated that it is essential that data collected to develop the performance indicators for YouthBuild be disaggregated by gender and other characteristics, so that young women's participation in the program can be evaluated. We do track this data and disaggregate participation by, among other things, gender for review of program activity. We have an electronic management information system (MIS) that performs this operation for internal analysis. This information allows us to craft policy to address program concerns as they arise.

Another commenter recommended that we mention reduction in recidivism as a performance measure that the Secretary may require to be tracked. As explained above, we have determined that it is important to use the Common Measures for the YouthBuild program which are also required by sec. 173A(c)(3)(B)(xii) of WIA. We will provide the details of the performance indicators in administrative guidance and will take the comments into consideration as performance standards are established. If we later conclude that the standard identified by the commenter, or any other performance standard is appropriate, § 672.400(a)(4) allows us to require additional performance indicators not listed in § 672.400(a)(1) through (3).

Another commenter recommended that YouthBuild programs be held to the same or equivalent standards required of apprenticeship programs under 29 CFR part 29. The commenter reasoned that the standards set forth at 29 CFR 29.5, would ensure a quality program.

We appreciate the commenter's suggestions as means to enhance YouthBuild standards. However, if we were to apply all of the requirements of 29 CFR part 29 to YouthBuild, we would extend the period of training beyond the period of performance authorized in the Transfer Act.

What are the reporting requirements for YouthBuild grantees? (§ 672.410)

We did not receive any comments on this section. The final rule adopts the regulation as proposed.

What are the due dates for quarterly reporting? (§ 672.415)

We did not receive any comments on this section. The final rule adopts the regulation as proposed.

Subpart E—Administrative Rules, Costs and Limitations

This subpart deals with other Federal regulations that apply to YouthBuild programs, and cost limitations and fund matching requirements.

What administrative regulations apply to the YouthBuild program? (§ 672.500)

This section explains the other regulations focusing on administrative standards, non-discrimination requirements, audit requirements, and other requirements that apply to YouthBuild programs.

One commenter recommended that the occupational skills and safety training provided by grantees include comprehensive training on equal

employment opportunity laws, rights, and responsibilities. The commenter believes that training YouthBuild participants about their equal employment opportunity rights and responsibilities will help create a work environment free of discrimination for all workers.

We agree that a work environment free of unlawful discrimination is very important. Therefore, § 672.500 specifically refers to the WIA nondiscrimination regulations at 29 CFR part 37 that apply to YouthBuild. Furthermore, the nondiscrimination provisions of WIA in sec. 188 require YouthBuild grantees to ensure equal opportunity and prevent discrimination in their programs. WIA sec. 188 ensures nondiscrimination and equal opportunity for various categories of persons, including persons with disabilities, who apply for and participate in programs and activities operated by recipients of WIA Title I financial assistance. Finally, while we do not require YouthBuild grantees to conduct comprehensive Equal Employment Opportunity training for program participants, the programs are required by 29 CFR 37.29 through 37.32 to post, in a conspicuous place in the YouthBuild facility, an equal opportunity hiring policy applicable to YouthBuild program staff.

Another commenter requested that we specify young women as a target population in YouthBuild's nondiscrimination regulations in Subpart E of the Rule. Section 672.500 explicitly states that the non-discrimination provisions in 29 CFR part 37 are applicable to YouthBuild. Part 37 broadly prohibits all forms of discrimination for WIA Title I programs (which include YouthBuild), including against women. Specifically, 29 CFR 37.5 states that ''[n]o individual in the United States may, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief … be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIA Title I—funded program or activity.'' We believe that these applicable non-discrimination provisions sufficiently protect YouthBuild participants, including young women

How may grantees provide services under the YouthBuild program? (§ 672.505)

We did not receive any comments on this section. The final rule adopts the regulation as proposed.

What cost limits apply to the use of YouthBuild program funds? (§ 672.510)

Two commenters recommended that the restriction or cap of the cost of supervision and training for participants in the rehabilitation or construction of community and other public facilities be raised from 10 percent to 25 percent or 30 percent, or be eliminated. One commenter explained that the current housing crisis has affected rural and tribal YouthBuild programs by making it difficult for these programs to maintain a pipeline of rehabilitation and construction projects for skills training.

We understand that the comments are aimed at increasing training projects for YouthBuild participants and producing projects that may bring added value to the broader community. However, we may not alter the cost limitation by regulation because it is statutorily mandated in WIA Section 173A(c)(2)(C).

What are the cost-sharing or matching requirements of the YouthBuild program? (§ 672.515)

We did not receive any comments on this section. The final rule adopts the regulation as proposed.

What are considered to be leveraged funds? (§ 672.520)

This section provides that funds must be applied toward allowable costs to be counted as leveraged funds.

One commenter stated that by focusing solely on allowable costs, the regulations penalize rural and Native groups, which have fewer opportunities to match and to leverage funds, as well as any group that raises funds for unallowable costs to advance their program goals. The commenter suggests creating a third category for which programs are acknowledged and rewarded (with application review points or monitoring visit assessment ratings) called ''Other Funds Raised to Support the Program.'' The commenter states this would encourage programs to fundraise for legitimate needs (but ''unallowable'' costs) while assisting us to fully capture local support for YouthBuild. The commenter also suggested that match and leveraged funding level requirements and criteria be lowered for rural and tribal programs in high-poverty and/or persistently poor census tracts or counties, in recognition of very limited assets and resources in these communities.

While we recognize that rural and tribal programs are often located in high-poverty and/or persistently poor census tracts, we have decided not to lower the match requirement. We believe that well -run YouthBuild programs can not rely solely on Federal grant funds. YouthBuild programs, to be effective, must have several different funding sources in order to be able to provide the various services participants need. The required match over a three year period of performance brings necessary resources and partners to the program. Therefore, we do not believe that the requirement is so onerous that it prevents these kinds of grantees from serving as YouthBuild grantees.

Furthermore, the match requirement demonstrates the commitment of the community and the program to provide the necessary resources for the success of the YouthBuild program. Our program experience is that that a significant number of rural and native applicants have been able to meet the match requirement, therefore we do not believe that that requirement prevents rural and tribal programs from serving as YouthBuild grantees.

We want to clarify that costs which benefit the grant program (whether paid for with Federal or non-Federal resources) and are otherwise allowable under the cost principles are allowable under the grant and may be used as leveraged funds as long as no other statutory, regulatory, or grant provision prohibits the use of such funds for that purpose. In response to the commenter's proposed third category, the type of funds the commenter characterizes are already taken into account. An additional category is not needed since leveraged or matched funds are already considered in the review of the application.

How are the costs associated with real property treated in the YouthBuild program? (§ 672.525)

This section explains the costs associated with real property that are allowable solely for the purpose of training YouthBuild participants.

We received four comments on this section, one of which was outside the scope of the NPRM. One commenter recommended that personal protective equipment (PPE) be allowed as an expense for YouthBuild training activities in § 672.525(c)(1) in order to ensure that YouthBuild participants comply with Federal and State health and safety standards.

We agree that the protection and safety of YouthBuild participants during construction training is of the highest importance. Therefore, we have amended the final rule to include PPE as an allowable expense for YouthBuild training activities under § 675.525(c)(1).

Two commenters asked that the cost of land acquisition for the construction of a new building for the purposes of

YouthBuild construction training be an allowable cost for match and leverage requirements. Because YouthBuild is a job skills training program, as a matter of policy, the allowable costs for match and leverage must be made up of training-related costs and not property costs. Therefore, the final rule continues to disallow land acquisition as an allowable cost.

What participant costs are allowable under the YouthBuild program? (672.530)

We did not receive any comments on this section. However, as described above in the discussion of § 672.310, we have added language to § 672.530(e) to clarify that the costs for providing additional benefits, described in § 672.530(e)(1) through (3), to participants or individuals who have exited the program and are receiving follow-up services, can still be incurred after participants terminate participation in the program.

What effect do payments to YouthBuild participants have on eligibility for other Federal needs-based benefits? (§ 672.535)

This section explains what effect stipends and other assistance received from YouthBuild have on a participant's income for purposes of establishing need for other Federally sponsored needs-based programs.

One commenter stated that wages paid to participating youth as part of construction skills training should be exempt from income considerations for Temporary Assistance for Needy Families (TANF), Section 8 rental assistance programs, and Medicaid income thresholds. The commenter goes on to explain that access to nutrition, housing, and health care should not be diminished by participating in an employment and training program that will help participants become self-sufficient.

We agree. Under the WIA regulations at 20 CFR 667.272(c), allowances, earnings, and payments to individuals participating in programs under Title I of WIA are not considered as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally-assisted program based on need other than as provided under the Social Security Act (42 U.S.C. 301). Since YouthBuild is a WIA Title I Program, income earned from participation in the YouthBuild program should not disqualify participants from benefitting from other Federally-sponsored needs-based programs that are available to them.

What program income requirements apply under the YouthBuild program? (§ 672.540)

This section deals with program income requirements, as specified in the applicable Uniform Administrative Requirements at 29 CFR 95.24 and 97.25.

One commenter stated that it was disappointing to learn that, in the NPRM, we proposed that revenue from the sale or rental of YouthBuild construction and rehabilitation projects would not be counted as program income because it would be discouraging to participants to see the fruits of their labors not reinvested in improving and sustaining their program.

We agree with the commenter that under the Uniform Administrative Requirements rental income is considered program income and can be used to pay for allowable costs incurred by the program. We have amended § 672.540(b) to reflect this change. However, under the Uniform Administrative Requirements, income derived from the sale of YouthBuild construction and rehabilitation projects is not considered program income. We encourage grantees to reinvest any revenue realized through sales back into the YouthBuild programs to promote long-term sustainability.

Are YouthBuild programs subject to the Davis-Bacon Act labor standards? (§ 672.545)

This section deals with the Davis-Bacon wage rules that cover prevailing wage rates on Federally-funded or -assisted construction projects. We received five comments on this section. Two commenters stated that many groups may be confused by the Davis-Bacon Act labor standards and its application to YouthBuild. One commenter suggested that we offer separate guidance on this issue. At this time, ETA has no plans to offer guidance on Davis-Bacon labor standards' applicability to YouthBuild. However, the Department's Wage and Hour Division (WHD), which is responsible for the administration of the Davis-Bacon Act labor standards, does offer compliance guidance at its Web site at *http://www.dol.gov/whd/regs/compliance/ca_main.htm.*

The other commenter requested a definition of ''Davis-Bacon-covered laborer or mechanic work.'' The definition of laborer or mechanic work for Davis-Bacon purposes can be found at 29 CFR 5.2.

Proposed § 672.545(b)(1) of the NPRM explained that YouthBuild participants could be classified as ''trainees'' for Davis-Bacon purposes if they are individually registered in a trainee program approved by ETA. Two commenters objected to classifying YouthBuild participants as ''trainees'' on Davis-Bacon covered projects that would allow the YouthBuild ''trainee'' to be paid less than the Davis-Bacon Labor Standards require. Both commenters go on to say that allowing YouthBuild ''trainees'' to be paid lower rates than workers subject to the Davis-Bacon wage requirements would provide an incentive to hire YouthBuild ''trainees'' for construction work instead of journey-level construction workers and apprentices in many of the building and construction trades. It also, according to one commenter, could result in the loss of jobs and job opportunities for laborers. The commenters also suggest that establishing YouthBuild programs as ''trainee'' programs would place them in direct competition with many formal apprenticeship programs registered with the Department because in many instances, according to the commenters, the two training programs draw upon the same pool of candidates. Both commenters argue that because there are other benefits attached to participation in YouthBuild such as needs-based stipends and other services, this would place YouthBuild ''trainees'' at a competitive advantage with apprentices and journey-workers by making YouthBuild ''trainees'' cheaper to employ. One commenter states that this affects the construction industry by weakening its ability to attract and retain skilled workers. This commenter goes on to argue that the YouthBuild program does not qualify as a certified and registered training program under ETA and therefore, YouthBuild participants should not be classified as ''trainees'' for Davis-Bacon purposes.

However, this commenter encourages us to promote cooperation and partnerships between YouthBuild and registered apprenticeship programs and to promote the transfer of YouthBuild training credit within these apprentice programs. Furthermore, the other commenter argues that there is nothing in the Transfer Act that indicates the purpose of YouthBuild is to create trainee programs registered with ETA. Finally, the commenter states that it seems clear that Congress intended YouthBuild to serve as a source of qualified applicants for formal pre-apprenticeship and registered apprenticeship training programs in the building and construction industry.

The two commenters linked comments about the YouthBuild Trainee—Apprenticeship Preparation

Standards (YB–TAP) to the NPRM section that addresses certified ''trainee'' programs under the Davis-Bacon Act in § 672.545.

The YB–TAP standards are a set of national standards developed in close consultation with ETA's Office of Apprenticeship (OA). The standards provide the basis for a YouthBuild program to establish an OA-approved trainee training program. By using the YB–TAP standards, a YouthBuild program can participate in a nationally approved trainee training program that allows it to pay participants less than the Davis-Bacon journey worker wage rates when performing work on Federal and federally assisted construction projects to which Davis-Bacon requirements apply.

Our intent in developing the YB–TAP was to design standards specifically for YouthBuild to create a more formal pathway into registered apprenticeships for YouthBuild participants, to create consistency in the construction skills training offered by YouthBuild programs across the country, and to provide another portable credential for YouthBuild program participants. Additionally, YB–TAP provided greater flexibility for YouthBuild programs to work on sites covered by Davis-Bacon, and thus expand the pool of potential worksites for grantees which often struggle to find suitable projects for worksite training. Of the 223 DOL-funded YouthBuild programs, 28 have registered with YB–TAP to-date; 12 of those requested and received a certification to have participants work at Davis-Bacon-covered sites, which allows them to be paid at less than the journey worker prevailing wage.

However, as a result of implementing YB–TAP, we found unintended consequences have arisen that are a concern for YouthBuild programs. Many of the organizations that YouthBuild seeks to partner with see YB–TAP as being in direct competition because programs are allowed to pay their participants, as trainees, less than the prevailing wage rate. The lower ratio of journey workers to trainees approved in the YB–TAP program makes it less expensive for a contractor to hire a YouthBuild-sponsored construction crew versus a journey worker staffed crew, and the YB–TAP standards, in effect, create a competing apprenticeship-like program approved by the Department.

Therefore, while these provisions for trainees who may be paid less than Davis-Bacon journeyman wage rates remain in effect as part of the Davis-Bacon Act labor standards, we have deleted the references to trainees and registered trainee programs in § 672.545(b)(1) to indicate that we will not approve programs as ''trainee'' programs for Davis-Bacon wage rate purposes without further notice. We believe this change is currently in the best interests of the YouthBuild program for the reasons discussed above.

What are the recordkeeping requirements for YouthBuild programs? (§ 672.550)

We did not receive any comments on this section. The final rule adopts the regulation as proposed.

Subpart F—Additional Requirements

This subpart deals with other requirements, such as safety requirements and YouthBuild housing requirements, with which all programs must comply.

What are the safety requirements for the YouthBuild program? (§ 672.600)

This section explains the safety standards that YouthBuild grantees must meet.

A commenter wrote that though safety is a preeminent concern for YouthBuild grantees, following National Institute for Occupational Safety and Health (NIOSH) and Occupational Safety and Health Administration (OSHA) standards can present significant challenges. That commenter explains that Mental Toughness is only effective if young people gain some exposure to the worksite, and it is not practical to provide such training at the beginning of Mental Toughness. The commenter asks that grantees be given some discretion in the timing of OSHA safety training to accommodate the purpose of Mental Toughness. The commenter also suggests that many YouthBuild grantees do not own or manage their own construction sites. They build in cooperation with a housing partner, such as Habitat for Humanity. The commenter believes it would be appropriate to follow the safety standards used by the housing partner.

On November 14, 2006, we published, at 71 FR 66349, a **Federal Register** notice requesting public comments and announcing public meetings on the design of YouthBuild grants. The notice sought public input and observations on the optimum number of years and amount of grant awards, ways to ensure grantees meet educational and employment outcomes, how capacity building grants can be strengthened, and ways to improve any other aspect of the program. We received four comments, including comments from NIOSH and OSHA, relating to safety issues in response to the **Federal Register** notice. The NIOSH comments emphasized the dangers of youth working in construction and noted that youth fatalities in construction are related to noncompliance with child labor laws and occupational safety and health regulations. The comments from OSHA similarly stressed the importance of safety training and identification of worksite hazards.

Based upon the concerns raised by these commenters and others, the NPRM required that YouthBuild grantees not only comply with Federal and State health and safety standards, including the hazardous orders in the WHD child labor regulations, but also that they: Provide comprehensive safety training for youth working on YouthBuild construction projects; have written, jobsite-specific, safety plans overseen by an on-site supervisor with authority to enforce safety procedures as part of the grant application; provide necessary personal protective equipment to youth working on YouthBuild projects; and submit injury incident reports to ETA. The intent of these requirements is to protect the health and safety of YouthBuild participants on YouthBuild work sites, and to ensure that YouthBuild grantees comply with child labor laws.

We reiterate the importance of the NIOSH and OSHA safety standards for YouthBuild programs to ensure participant safety; therefore, we will not grant programs the discretion to provide the training after youth have already been on the worksite. The dangers inherent in youth working in construction and the well documented youth fatalities in construction which are directly related to noncompliance with child labor laws and occupational safety and health regulations makes it imperative that YouthBuild participants receive NIOSH and OSHA training before admittance to the work site. However, we recommend that any safety standards that may exist in addition to the required safety standards already discussed should be observed by YouthBuild participants. Therefore, it is appropriate for participants also to follow the safety standards of a YouthBuild housing partner, as the commenter suggested, as long as the standards compliment Federal, State, and local safety standards and provide at least the same level of safety as the required Federal, State and local standards.

Another commenter recommended that the requirement that grantees comply with Federal child labor laws be extended to include state child labor laws as well. We agree it is important for programs to comply with state child

labor laws as well and therefore has included the requirement in § 672.600.

The same commenter contended that we need to develop an injury surveillance system to routinely collect, analyze and report the injury data that grantees will be required to submit under the proposed rules. We agree with the importance of capturing this information and already have a system in place in which to capture the data.

Further, the commenter stressed the need to conceptualize and implement health and safety training as an integral and essential component of occupational skills development. The commenter felt that health and safety training was an ''add-on'' to occupational skills training instead of being an integral component of occupational skills development. We disagree with this assessment. Safety of the participants and the program staff is of significant importance to the Department. This is expressed not only in the proposed rule, but in all of the YouthBuild SGAs.

What are the reporting requirements for youth safety? (§ 672.605)

This section explains the requirements and process for filing reports when youth are injured while working on YouthBuild projects.

One commenter asked that we specify the process of reporting and filing injury incident reports for accidents involving youth that occur while youth are working on YouthBuild projects. This commenter goes on to ask that we provide details on what forms must be used in filing injury incidents, where to obtain the reports, and where the form is filed.

As we explained in § 672.605 of the NPRM and in this final rule, a YouthBuild grantee is responsible for sending a copy of OSHA's injury incident report form, to the U.S. Department of Labor, Employment and Training Administration within 7 days of any reportable injury suffered by a YouthBuild participant. The injury incident report form is available from OSHA and can be downloaded at *http://www.osha.gov/recordkeeping/RKforms.html.*

What environmental protection laws apply to the YouthBuild program? (§ 672.610)

We did not receive any comments on this section. The final rule adopts the regulation as proposed.

What requirements apply to YouthBuild housing? (§ 672.615)

This section explains that, for a period of at least ten years, all YouthBuild housing must be rented or sold to low income or homeless individuals and families, and that housing must be kept in a clean and sanitary condition. In addition, this section outlines some of the rules that must be followed when leasing YouthBuild housing to homeless or low income families and individuals.

One commenter expressed concern that there is a potential for exploitation for private benefit without requiring grantees to have written policies governing the rehabilitation of low income houses that are occupied. The same commenter went on to suggest that the Department's lawyers examine what impact, if any, Federal rules relating to relocation may have on the rehabilitation of occupied housing. The commenter pointed out that the Uniform Relocation Act and related statutes provide certain rights to residents who are relocated as a result of Federally-assisted housing activities.

We share the commenter's concern that there is a chance for exploitation for private benefit without requiring grantees to have a written policy. Furthermore, we appreciate the commenter's concerns over the applicability of the Uniform Relocation Act as it pertains to grantees rehabilitating occupied low income housing. We will examine the issues and, if necessary, will produce guidance addressing both of these issues.

IV. Administrative Information

Regulatory Flexibility Analysis, Executive Order 13272, Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603(a) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) which will describe the impact of a regulation on small entities. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the final rule is not expected to have a significant economic impact on a substantial number of small entities. Furthermore, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 (SBREFA), an agency is required to produce compliance guidance for small entities if the rule has a significant economic impact on a substantial number of small entities. The RFA defines small entities as small business concerns, small not-for-profit enterprises, or small governmental jurisdictions. The final rule directly affects all YouthBuild grantees, of which there are currently 226. About half of these are small entities (generally non-profit, community-based organizations). We do not believe that the final rule will have a significant economic impact on a substantial number of these small entities. We have certified this to the Chief Counsel for Advocacy, Small Business Administration, under the Regulatory Flexibility Act. The primary issues affected by the final rule are discussed below.

The YouthBuild program has existed since 1978. YouthBuild began as a Federal grant program in 1994 and was administered by HUD until 2006 when it was transferred to the Department. YouthBuild operates as a voluntary grant program. While there are matching and leverage requirements, organizations apply for Federal grant funds. Also, grant funds may be used to pay for requirements in the final rule that address participant safety, worksite environmental standards, and a required follow-up time period for YouthBuild enrollees.

The final rule requires that all applicable National Institute for Occupational Safety and Health (NIOSH) and Occupational Safety and Heath Administration (OSHA) regulations be followed for youth who are on YouthBuild participant construction sites. The NIOSH safety standards are standard requirements for all Federally-funded construction worksites across the United States. The requirements will not add demonstrably to the cost of any YouthBuild program because safety equipment required by NIOSH standards can be purchased using YouthBuild grant funds provided by the Department. Further, the cost of the other requirements—supervisor training, development of safety plans, safety reporting, etc.—can be paid for with grant funds as well.

In addition, the final rule requires that all Federal environmental standards, including National Environmental Policy Act of 1969 (NEPA), be followed. This is a standard for all Federally-funded construction worksites across the United States and is already established procedure at many YouthBuild work sites. YouthBuild grant funds may be used to ensure compliance with the required environmental standards.

The YouthBuild program will have a beneficial economic impact on small entity program participants. While there are match and leverage requirements under YouthBuild, the grantees are applying to receive additional resources to carry out their purposes for the benefit of participants. Finally, we are aware of no public concern that the rule will have a significant economic impact

on a substantial number of small entities. We specifically invited comments from members of the public who believe there will be such an impact on small entities. We did not receive any comments in response.

Accordingly, we certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

One of the purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, is to minimize the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise the collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information.

The collection of data described in this final rule contains requirements to implement reporting and recordkeeping requirements for the YouthBuild program. This reporting structure features standardized data collection for program participants, and quarterly narrative and Management Information System (MIS) performance report formats. All data collection and reporting will be done by YouthBuild grantees.

These requirements were previously reviewed and approved for use by OMB under 44 U.S.C. 3507 and 5 CFR part 1320, and assigned OMB control number 1205–0464 under the provisions of the PRA. YouthBuild grantees will collect and report selected standardized information on participants in YouthBuild programs for the purposes of general program oversight, evaluation, and performance assessment. ETA will provide all grantees with a YouthBuild management information system (MIS) to use for collecting participant data and for preparing and submitting the required quarterly reports. We have determined that this final rule contains no new information collection requirements.

We estimate that the public reporting burden for this collection of information will amount to 16,280 hours. This total includes all paperwork required by this rule over the course of one program year for all grantees nationwide.

Executive Orders 12866 and 13563

Executive Orders (E.O.) 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more or adversely and materially affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities (also referred to as ''economically significant''); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866

We received one comment on E.O. 12866 addressing whether this rule is a significant regulatory action. The commenter was concerned that YouthBuild participants who were employed on Davis-Bacon sites would displace skilled construction apprentices and journey workers because the YouthBuild participant could be paid a lower than Davis-Bacon required wage. The commenter suggested that this would result in the unemployment of these trade workers and the effect on the economy could be large, ranging from loss of income and loss of buying power, to increased Federal unemployment support and increased need for other social services. However, in response to the comment, we have determined that YouthBuild participants that work on Davis-Bacon worksites will be subject to Davis-Bacon wage rates. Therefore, YouthBuild participants could not be employed at lower than Davis-Bacon wage rates.

E.O. 13563, issued after publication of the NPRM, asked agencies to identify, to the extent possible, the necessity of the regulation as well as the costs and benefits of the regulation.

YouthBuild is a workforce development program that provides employment, education, leadership development, and training opportunities to disadvantaged and low-income youth between the ages of 16 and 24, most of whom are secondary school drop outs and are either a member of a low-income family, a foster care youth, a youth offender, a youth with a disability, a child of an incarcerated parent, or a migrant youth. This regulation is necessary for the orderly operation and management of the YouthBuild program because the Department has not published regulations governing the YouthBuild program since it was transferred from HUD to the Department in 2006.

Program participants receive numerous benefits through their participation in the YouthBuild program. Participants receive education services that may lead to either a high school diploma or GED. Further, they receive occupational skills training and are encouraged to pursue a post-secondary education or additional training, including registered apprenticeship programs. The program is designed to create a skilled workforce either in the construction industry, through the rehabilitation and construction of housing for homeless individuals and families and low-income families, as well as public facilities, or in other high wage, high-demand jobs. The program also benefits the larger community because it provides more new and rehabilitated affordable housing.

In contrast to the benefits provided to both program participants and their communities, the cost to YouthBuild programs to provide these services is minimal. The money to provide these benefits to program participants is provided to YouthBuild programs both through an annual grant competition overseen by the Department, as well as any additional leveraged resources obtained by YouthBuild programs. Based on these factors, we have reviewed the costs and benefits of the regulation and have determined that this regulatory approach maximizes net benefits.

While the regulatory requirements defined and implemented by this final rule for this grant program will not have an annual, measurable effect on the economy of $100 million or more, the final rule raises novel policy issues about, among other things, application of Davis-Bacon wage rules, Federal cost limitations, and the expansion of the YouthBuild program approved training to other occupational skills besides construction skills training. Therefore, this rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of E.O. 12866 and submitted to OMB for review.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531)

directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. This final rule has no ''Federal mandate,'' which is defined in 2 U.S.C. 658(6) to include either a ''Federal intergovernmental mandate'' or a ''Federal private sector mandate.'' A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty upon the private sector which is not voluntary. The YouthBuild program is a grant program. Grantee participation in YouthBuild is voluntary. Furthermore, this final rule does not include any Federal mandate that may result in increased expenditure by State, local, and tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million.

Executive Order—12630 Government Actions and Interference With Constitutionally Protected Property Rights

The YouthBuild Transfer Act requires that housing rehabilitated or constructed with YouthBuild grant funds be for the purposes of housing homeless individuals and families or low-income families. In order for the Department to ensure that the YouthBuild program is administered in compliance with the legislation, each grantee must ensure that the owner of the property where YouthBuild funds are spent to construct or rehabilitate residential units records a restrictive covenant on the property, limiting the use of the units to housing for homeless individuals and families and low-income families. Such a restrictive covenant will not result in a taking without just compensation. This is a contractually-based restriction and therefore property owners are compensated for any limitations on the use of their land. Property owners enter into these contracts creating the restriction voluntarily and they receive consideration in the form of services from the YouthBuild program to build or rehabilitate their housing for the burden on their property. Subsequent purchasers will have notice of the covenant and will be able to determine purchase price with knowledge of the limitations on the use of the property. Furthermore, the restrictive covenant will expire 10 years from the date of issuance of occupancy permit, giving flexibility to the grantee and/or property owner within a reasonable time period. We are committed to upholding the integrity of the YouthBuild program in all its aspects and believe that a restrictive covenant is the best way to meet the purpose of the legislation to increase the supply of housing for homeless individuals and families and low-income families.

Executive Order 12988—Civil Justice

This final rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The final rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct and has been reviewed carefully to eliminate drafting errors and ambiguities.

Executive Order 13045

Executive Order 13045 concerns the protection of children from environmental health risks and safety risks. This final rule has no impact on the environmental health or safety of children.

Executive Order 13175

Executive Order 13175 addresses the unique relationship between the Federal Government and Indian Tribal governments. The order requires Federal agencies to take certain actions when regulations have ''Tribal implications.'' Required actions include consulting with Tribal governments before promulgating a regulation with Tribal implications and preparing a Tribal impact statement. The order defines regulations as having Tribal implications when they have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This final rule addresses a voluntary grant program, YouthBuild, which is administered by the U.S. Department of Labor. Although there are tribal YouthBuild grantees, we conclude that this final rule does not directly affect one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes, or the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Environmental Impact Assessment

We have reviewed this final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the regulations of the Council on Environmental Quality (40 CFR. part 1500), and the Department's NEPA procedures (29 CFR. part 11). The final rule will not have a significant impact on the quality of the human environment, and, thus, we have not prepared an environmental assessment or an environmental impact statement.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681), requires us to assess the impact of this final rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale.

We have assessed this final rule and determines that it will not have a negative effect on families. Indeed, we maintain that this rule will strengthen families by providing low-income housing and occupational training for low-income families and others.

Executive Order 13211

This final rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

Privacy Act of 1974

The Privacy Act of 1974 is implicated when a regulation: (1) Requires either collection of information that the agency will retrieve by an individual's name or other personal identifier or would create a program where the agency's program records will be retrieved by an individual's name or personal identifier; and (2) involves computerized matching of records from a Privacy Act System of Records with any other records.

This final rule is not affected by the Privacy Act of 1974 as it does not require the Department to collect information on an individual's name or other personal identifier or involve computerized matching of records from a Privacy Act System of Records with any other records.

Plain Language

We drafted this final rule in plain language.

Therefore, according to the preamble, ETA amends 20 CFR chapter V by adding part 672 to read as follows:

PART 672—PROVISIONS GOVERNING THE YOUTHBUILD PROGRAM

Subpart A—Purpose and Definitions

Sec.

Authority: 29 U.S.C. 2918a.

Subpart A—Purpose and Definitions

§ 672.100 What is YouthBuild?

(a) YouthBuild is a workforce development program that provides employment, education, leadership development, and training opportunities to disadvantaged and low-income youth between the ages of 16 and 24, most of whom are secondary school drop outs and are either a member of a low-income family, a foster care youth, a youth offender, a youth with a disability, a child of an incarcerated parent, or a migrant youth.

(b) Program participants receive education services that may lead to either a high school diploma or General Educational Development (GED). Further, they receive occupational skills training and are encouraged to pursue a post- secondary education or additional training, including registered apprenticeship programs. The program is designed to create a skilled workforce either in the construction industry, through the rehabilitation and construction of housing for homeless individuals and families and low-income families, as well as public facilities, or in other high wage, high-demand jobs. The program also benefits the larger community because it provides more new and rehabilitated affordable housing.

§ 672.105 What are the purposes of the YouthBuild program?

(a) The overarching goal of the YouthBuild program is to provide disadvantaged and low-income youth the opportunity to obtain education and employment skills in local in-demand and high-demand jobs to achieve economic self-sufficiency. Additionally, the YouthBuild program has as goals:

(1) To promote leadership skills development and community service activities. YouthBuild programs will foster the development of leadership skills and a commitment to community improvement among youth in low-income communities.

(2) To enable youth to further their education and training. YouthBuild programs will provide counseling and assistance in obtaining post-secondary education and/or employment and training placements that allow youth to further their education and training.

(3) To expand the supply of permanent affordable housing and reduce the rate of homelessness in communities with YouthBuild programs. The program seeks to increase the number of affordable housing units available and to decrease the number of homeless individuals and families in their communities.

(b) Through these educational and occupational opportunities, to enable youth participants to provide a valuable contribution to their communities. The YouthBuild program will add skilled workers to the workforce by educating and training youth who might have otherwise succumbed to the negative influences within their environments.

§ 672.110 What definitions apply to this part?

Alternative school. The term ''alternative school'' means a school or program that is set up by a State, school district, or other community-based entity to serve young people who are not succeeding in a traditional public school environment. In order for an ''alternative school'' to qualify as of part of a ''sequential service strategy'' it must be recognized by the authorizing entity designated by the State, award a high school diploma or both a high school diploma and a GED and, must be affiliated with a YouthBuild program.

Community or other public facility. The term ''community or other public facility'' means those facilities which are either privately owned by non-profit organizations, including faith-based and community-based organizations, and publicly used for the benefit of the community, or publicly owned and publicly used for the benefit of the community.

Core construction. The term ''core construction'' means activities that are directly related to the construction or rehabilitation of residential, community, or other public facilities. These activities include, but are not limited to, job skills that can be found under the Standard Occupational Classification System (SOC) major group 47, Construction and Extraction Occupations, in codes 47–1011 through 47–4099. These activities may also include, but are not limited to, construction skills that may be required by green building and weatherization industries but are not yet standardized. A full list of the SOC's can be found at the Bureau of Labor Statistics (BLS) Web site, *http://www.bls.gov/soc.*

Eligible entity. The term ''eligible entity'' means a public or private nonprofit agency or organization (including a consortium of such agencies or organizations), including—

(1) A community-based organization;

(2) A faith-based organization;

(3) An entity carrying out activities under this Title, such as a local school board;

(4) A community action agency;

(5) A State or local housing development agency;

(6) An Indian tribe or other agency primarily serving Indians;

(7) A community development corporation;

(8) A State or local youth service or conservation corps; and

(9) Any other entity eligible to provide education or employment training under a Federal program (other than the program carried out under this part).

Homeless individual. For purposes of YouthBuild, the definition of ''homeless individual'' at Section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) applies.

Housing development agency. The term ''housing development agency'' means any agency of a Federal, State or local government, or any private nonprofit organization, that is engaged in providing housing for homeless individuals or low-income families.

Income. As defined in 42 U.S.C. 1437a(b), ''income'' is: Income from all sources of each member of the household, as determined in accordance with the criteria prescribed by the Secretary of Labor, in consultation with the Secretary of Agriculture, except that any amounts not actually received by the family and any amounts which would be eligible for exclusion under sec. 1382b(a)(7) of the United States Housing Act of 1937, may not be considered as income under this paragraph.

Indian; Indian tribe. As defined in 25 U.S.C. 450b of sec. 4 of the Indian Self-Determination and Education Assistance Act, the term ''Indian'' is a person who is a member of an Indian tribe; and the term ''Indian tribe'' is any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Individual of limited English proficiency. As defined in 20 U.S.C. 9202(10), an ''individual of limited English proficiency'' is: An adult or out-of-school youth who has limited ability in speaking, reading, writing, or understanding the English language, and:

(1) Whose native language is a language other than English; or

(2) Who lives in a family or community environment where a language other than English is the dominant language.

Low-income family. As defined in 42 U.S.C. 1437a(b)(2), a ''low-income family'' is: A family whose income does not exceed 80 percent of the median income for the area, as determined by the Secretary of Labor with adjustments for smaller and larger families, except that the Secretary of Labor may establish income ceilings higher or lower than 80 percent of the median for the area if the Secretary finds that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes. Further, as defined by 42 U.S.C. 1437a(b)(2)(3), the term families includes families consisting of one person.

Migrant youth. The term ''migrant youth'' means a youth, or a youth who is the dependent of someone who, during the previous 12 months has:

(1) Worked at least 25 days in agricultural labor that is characterized by chronic unemployment or underemployment;

(2) Made at least $800 from agricultural labor that is characterized by chronic unemployment or underemployment, if at least 50 percent of his or her income came from such agricultural labor;

(3) Was employed at least 50 percent of his or her total employment in agricultural labor that is characterized by chronic unemployment or underemployment; or

(4) Was employed in agricultural labor that requires travel to a jobsite such that the farmworker is unable to return to a permanent place of residence within the same day.

Needs-based stipend. The term ''Needs-based stipends'' means additional payments (beyond regular stipends for program participation) that are based on defined needs that enable youth to participate in the program. To provide needs-based stipends the grantee must have a written policy in place, which defines: Eligibility; the amounts; and the required documentation and criteria for payments. This policy must be applied consistently to all program participants.

Occupational skills training. The term ''Occupational skills training'' means an organized program of study that provides specific vocational skills that lead to proficiency in performing the actual tasks and technical functions required by certain occupational fields at entry, intermediate, or advanced levels. The occupational skills training offered in YouthBuild programs must begin upon program enrollment and be tied to the award of an industry-recognized credential.

Partnership. The term ''partnership'' means an agreement that involves a Memorandum of Understanding (MOU) or letter of commitment submitted by each organization and applicant, as defined in the YouthBuild Transfer Act, that plan on working together as partners in a YouthBuild program. Each partner must have a clearly defined role. These roles must be verified through a letter of commitment, not just a letter of support, or an MOU submitted by each partner. The letter of commitment or MOU must detail the role the partner will play in the YouthBuild Program, including the partner's specific responsibilities and resources committed, if appropriate. These letters or MOUs must clearly indicate the partnering organization's unique contribution and commitment to the YouthBuild Program.

Public housing agency. As defined in 42 U.S.C. 1437a(b), a ''public housing agency'' is: Any State, county, municipality or other government entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing.

Registered apprenticeship program. The term ''registered apprenticeship program'' means:

(1) Registered under the Act of August 16, 1937 (commonly known as the ''National Apprenticeship Act''; 50 Stat. 664, chapter 663; 20 U.S.C. 50 *et seq.*); and

(2) A program with a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, as required under 29 CFR parts 29 and 30, including such matters as the requirement for a written apprenticeship agreement.

Sequential service strategy. The term ''sequential service strategy'' means the educational and occupational skills training plan developed for individuals who have dropped out of high school and want to enroll in a YouthBuild program. The plan is designed so that the individual sequentially enrolls in an alternative school, and after receiving a year or more of educational services, enrolls in the YouthBuild program.

Transitional housing. The term ''transitional housing'' means housing provided for the purpose of facilitating the movement of homeless individuals to independent living within a reasonable amount of time. The term includes housing primarily designed to serve deinstitutionalized homeless individuals and other homeless individuals who are individuals with

disabilities or are members of families with children.

Youth in foster care. The term ''youth in foster care'' means youth currently in foster care or youth who have ever been in foster care.

Youth who is an individual with a disability. The term youth who is an individual with a disability means a youth with any disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)) or a student receiving special education and related services under the Individuals with Disabilities Education Act (IDEA).

Subpart B—Funding and Grant Applications

§ 672.200 How are YouthBuild grants funded and administered?

The Secretary uses funds authorized for appropriation under sec. 173A of the Workforce Investment Act (WIA) to administer YouthBuild as a national program under Title I, Subtitle D of the Act. YouthBuild grants are awarded to eligible entities, as defined in § 672.110, through a competitive selection process described in § 672.205.

§ 672.205 How does an eligible entity apply for grant funds to operate a YouthBuild program?

The Secretary announces the availability of grant funds through a Solicitation for Grant Applications (SGA). The SGA contains instructions for what is required in the grant application, describes eligibility requirements, the rating criteria that will be used in reviewing grant applications, and special reporting requirements to operate a YouthBuild project.

§ 672.210 How are eligible entities selected to receive grant funds?

In order to receive funds under the YouthBuild program, an eligible entity applying for funds (applicant) must meet selection criteria established by the Secretary which include:

(a) The qualifications or potential capabilities of an applicant;

(b) An applicant's potential to develop a successful YouthBuild program;

(c) The need for an applicant's proposed program, as determined by the degree of economic distress of the community from which participants would be recruited (measured by indicators such as poverty, youth unemployment, and the number of individuals who have dropped out of secondary school) and of the community in which the housing and public facilities proposed to be rehabilitated or constructed are located (measured by indicators such as incidence of homelessness, shortage of affordable housing, and poverty);

(d) The commitment of an applicant to provide skills training, leadership development, counseling and case management, and education to participants;

(e) The focus of a proposed program on preparing youth for postsecondary education and training opportunities or local in-demand occupations;

(f) The extent of an applicant's coordination of activities to be carried out through the proposed program with:

(1) Local boards, One-Stop Career Center operators, and One-Stop partners participating in the operation of the One-Stop delivery system involved, or the extent of the applicant's good faith efforts, as determined by the Secretary, in achieving such coordination;

(2) Public education, criminal justice, housing and community development, national service, or postsecondary education or other systems that relate to the goals of the proposed program; and

(3) Employers in the local area.

(g) The extent to which a proposed program provides for inclusion of tenants who were previously homeless individuals or families in the rental of housing provided through the program;

(h) The commitment of additional resources to the proposed program (in addition to the funds made available through the grant) by:

(1) An applicant;

(2) Recipients of other Federal, State, or local housing and community development assistance who will sponsor any part of the rehabilitation, construction, operation and maintenance, or other housing and community development activities undertaken as part of the proposed program; or

(3) Entities carrying out other Federal, State, or local activities or activities conducted by Indian tribes, including vocational education programs, adult and language instruction educational programs, and job training using funds provided under WIA,

(i) An applicant's ability to enter partnerships with:

(1) Education and training providers including:

(i) The kindergarten through twelfth grade educational system;

(ii) Adult education programs;

(iii) Community and technical colleges;

(iv) Four-year colleges and universities;

(v) Registered apprenticeship programs; and

(vi) Other training entities.

(2) Employers, including professional organizations and associations. An applicant will be evaluated on the extent to which employers participate in:

(i) Defining the program strategy and goals;

(ii) Identifying needed skills and competencies;

(iii) Designing training approaches and curricula;

(iv) Contributing financial support; and

(v) Hiring qualified YouthBuild graduates.

(3) The workforce investment system which may include:

(i) State and local workforce investment boards;

(ii) State workforce agencies; and

(iii) One-Stop Career Centers and their cooperating partners.

(4) The juvenile and adult justice systems, and the extent to which they provide:

(i) Support and guidance for YouthBuild participants with court involvement;

(ii) Assistance in the reporting of recidivism rates among YouthBuild participants; and

(iii) Referrals of eligible participants through diversion or re-entry from incarceration.

(5) Faith-based and community organizations, and the extent to which they provide a variety of grant services such as:

(i) Case management;

(ii) Mentoring;

(iii) English as a Second Language courses; and

(iv) Other comprehensive supportive services, when appropriate.

(j) The applicant's potential to serve different regions, including rural areas and States that may not have previously received grants for YouthBuild programs; and

(k) Such other factors as the Secretary determines to be appropriate for purposes of evaluating an applicant's potential to carry out the proposed program in an effective and efficient manner.

(l) The weight to be given to these factors will be described in the SGA issued under § 672.205.

§ 672.215 How are eligible entities notified of approval for grant funds?

The Secretary will, to the extent practicable, notify each eligible entity applying for funds no later than 5 months from the date the application is received, whether the application is approved or disapproved. In the event additional funds become available, ETA reserves the right to use such funds to

select additional grantees from applications submitted in response to an SGA.

Subpart C—Program Requirements

§ 672.300 Who is an eligible participant?

(a) *Eligibility criteria.* Except as provided in paragraph (b) of this section, an individual is eligible to participate in a YouthBuild program if the individual is:

(1) Not less than age 16 and not more than age 24 on the date of enrollment; and

(2) A school dropout or an individual who has dropped out of school and reenrolled in an alternative school, if that reenrollment is part of a sequential service strategy; and

(3) Is one or more of the following:

(i) A member of a low-income family as defined in § 672.110;

(ii) A youth in foster care;

(iii) A youth offender;

(iv) A youth who is an individual with a disability;

(v) The child of a current or formerly incarcerated parent; or

(vi) A migrant youth as defined in § 672.110.

(b) *Exceptions.* Not more than 25 percent of the participants in a program, under this section, may be individuals who do not meet the requirements of paragraph (a)(2) or (3) of this section, if such individuals:

(1) Are basic skills deficient as defined in section 101(4) of WIA, even if they have their high school diploma, GED credential, or other State-recognized equivalent; or

(2) Have been referred by a local secondary school for participation in a YouthBuild program leading to the attainment of a secondary school diploma.

§ 672.305 Are there special rules that apply to veterans?

Special rules for determining income for veterans are found in 20 CFR 667.255 and for the priority of service provisions for qualified persons are found in 20 CFR part 1010. Those special rules apply to covered persons who are eligible to participate in the YouthBuild program.

§ 672.310 What eligible activities may be funded under the YouthBuild program?

Grantees may provide one or more of the following education and workforce investment and other activities to YouthBuild participants—

(a) Eligible education activities include:

(1) Services and activities designed to meet the educational needs of participants, including:

(i) Basic skills instruction and remedial education;

(ii) Language instruction educational programs for individuals with limited English proficiency;

(iii) Secondary education services and activities, including tutoring, study skills training, and dropout prevention activities, designed to lead to the attainment of a secondary school diploma, GED credential, or other State-recognized equivalent (including recognized alternative standards for individuals with disabilities);

(iv) Counseling and assistance in obtaining post-secondary education and required financial aid; and

(v) Alternative secondary school services;

(2) Counseling services and related activities, such as comprehensive guidance and counseling on drug and alcohol abuse and referral to appropriate treatment;

(3) Activities designed to develop employment and leadership skills, which may include community service and peer-centered activities encouraging responsibility and other positive social behaviors, and activities related to youth policy committees that participate in decisionmaking related to the program; and

(4) Supportive services, as defined under Title I of WIA Section 101(46), and provision of need-based stipends, as defined in § 672.110.

(b) Eligible workforce investment activities include:

(1) Work experience and skills training (coordinated, to the maximum extent feasible, with registered apprenticeship programs) in housing rehabilitation and construction activities described in paragraphs (c)(1) and (2) of this section;

(2) Occupational skills training;

(3) Other paid and unpaid work experiences, including internships and job shadowing; and

(4) Job search assistance.

(c) Other eligible activities include:

(1) Supervision and training for participants in the rehabilitation or construction of housing, including residential housing for homeless individuals and families or low-income families, or transitional housing for homeless individuals and families;

(2) Supervision and training for participants in the rehabilitation or construction of community or other public facilities, except that, as provided in § 672.505(b), not more than 10 percent of the funds awarded for each grant may be used for such supervision and training;

(3) Ongoing training and technical assistance for staff of grant recipients that is related to developing and carrying out the YouthBuild program;

(4) Payment of a portion of the administrative costs of the program as provided in § 672.505(a);

(5) Adult mentoring;

(6) Provision of wages, stipends, or additional benefits to participants in the program as provided in § 672.530; and

(7) Follow-up services as provided in § 672.325.

§ 672.315 What timeframes apply to participation?

An eligible individual selected for participation in the program must be offered full-time participation in the program for not less than 6 months and not more than 24 months.

§ 672.320 What timeframes must be devoted to education and workforce investment or other activities?

YouthBuild grantees must structure programs so that participants in the program are offered:

(a) Eligible education activities, as specified in § 672.310(a), during at least 50 percent of the time during which they participate in the program; and

(b) Eligible workforce investment activities, as specified in § 672.310(b), during at least 40 percent of the time during which they participate in the program. Grantees must provide the eligible workforce investment activities described in § 672.310(b)(1) as part of their program of eligible workforce investment activities.

(c) The remaining 10 percent of the time of participation can be used for the activities described in paragraphs (a) and (b) of this section and/or for leadership development and community service activities.

§ 672.325 What timeframes apply for follow-up services?

Follow-up services must be provided to all YouthBuild participants for a period of not less than 9 months but no more than 12 months after participants exit a YouthBuild program. These are services that assist participants in obtaining or retaining employment, or applying for and transitioning to post-secondary education or training.

Subpart D—Performance Indicators

§ 672.400 What are the performance indicators for YouthBuild grants?

(a) The performance indicators for YouthBuild grants are:

(1) Placement in employment or education;

(2) Attainment of a degree or certificate;

(3) Literacy and numeracy gains; and

(4) Such other indicators of performance as may be required by the Secretary.

(b) We will provide the details of the performance indicators in administrative guidance.

§ 672.405 What are the required levels of performance for the performance indicators?

(a) Expected levels of performance for each of the common performance indicators are national standards that are provided in separately issued guidance. Short-term or other performance indicators will be provided in separately issued guidance or as part of the SGA or grant agreement. Performance level expectations are based on available YouthBuild data and data from similar WIA Youth programs and may change between grant competitions. The expected national levels of performance will take into account the extent to which the levels promote continuous improvement in performance.

(b) The levels of performance established will, at a minimum:

(1) Be expressed in an objective, quantifiable, and measurable form; and

(2) Indicate continuous improvement in performance.

§ 672.410 What are the reporting requirements for YouthBuild grantees?

Each grantee must provide such reports as are required by the Secretary in separately issued guidance, including:

(a) The Quarterly Performance Report;

(b) The quarterly narrative progress report;

(c) The financial report; and

(d) Such other reports as may be required by the grant agreement.

§ 672.415 What are the due dates for quarterly reporting?

(a) Quarterly reports are due no later than 45 days after the end of the reporting quarter, unless otherwise specified in the reporting guidance issued under § 672.410; and

(b) A final financial report is required 90 days after the expiration of a funding period or the termination of grant support.

Subpart E—Administrative Rules, Costs, and Limitations

§ 672.500 What administrative regulations apply to the YouthBuild program?

Each YouthBuild grantee must comply with the following:

(a) The regulations found in this part.

(b) The general administrative requirements found in 20 CFR part 667, except those that apply only to the WIA Title I–B program and those that have been modified by this section.

(c) The Department's regulations on government-wide requirements, which include:

(1) The regulations codifying the Office of Management and Budget's government-wide grants requirements: Circular A–110 (codified at 2 CFR part 215), and Circular A–102 at 29 CFR parts 95 and 97, as applicable;

(2) The Department's regulations at 29 CFR part 37, which implement the nondiscrimination provisions of WIA section 188;

(3) The Department's regulations at 29 CFR parts 93, 94, and 98 relating to restrictions on lobbying, drug free workplace, and debarment and suspension; and

(4) The audit requirements of OMB Circular A–133 stated at 29 CFR part 99, as required by 29 CFR 96.11, 95.26, and 97.26, as applicable.

§ 672.505 How may grantees provide services under the YouthBuild program?

Each recipient of a grant under the YouthBuild program may provide the services and activities described in these regulations either directly or through subgrants, contracts, or other arrangements with local educational agencies, postsecondary educational institutions, State or local housing development agencies, other public agencies, including agencies of Indian tribes, or private organizations.

§ 672.510 What cost limits apply to the use of YouthBuild program funds?

(a) Administrative costs for programs operated under YouthBuild are limited to no more than 15 percent of the grant award. The definition of administrative costs can be found in 20 CFR 667.220.

(b) The cost of supervision and training for participants involved in the rehabilitation or construction of community and other public facilities is limited to no more than 10 percent of the grant award.

§ 672.515 What are the cost-sharing or matching requirements of the YouthBuild program?

(a) The cost-sharing or matching requirements applicable to a YouthBuild grant will be addressed in the grant agreement.

(b) The value of construction materials used in the YouthBuild program is an allowable cost for the purposes of the required non-Federal share or match.

(c) The value of land acquired for the YouthBuild program is not an allowable cost-sharing or match.

(d) Federal funds may not be used as cost-sharing or match resources except as provided by Federal law.

(e) The value of buildings acquired for the YouthBuild program is an allowable match, provided that the following conditions apply:

(1) The purchase cost of buildings used solely for training purposes is allowable; and

(2) For buildings used for training and other purposes, the allowable amount is determined based on the proportionate share of the purchase price related to direct training activities.

(f) Grantees must follow the requirements of 29 CFR 95.23 or 29 CFR 97.24 in the accounting, valuation, and reporting of the required non-Federal share.

§ 672.520 What are considered to be leveraged funds?

(a) Leveraged funds may be used to support allowable YouthBuild program activities and consist of payments made for allowable costs funded by both non-YouthBuild Federal, and non-Federal, resources which include:

(1) Costs which meet the criteria for cost-sharing or match in § 672.515 and are in excess of the amount of cost-sharing or match resources required;

(2) Costs which would meet the criteria in § 672.515 except that they are paid for with other Federal resources; and

(3) Costs which benefit the grant program and are otherwise allowable under the cost principles but are not allowable under the grant because of some statutory, regulatory, or grant provision, whether paid for with Federal or non-Federal resources.

(b) The use of leveraged funds must be reported in accordance with Departmental instructions.

§ 672.525 How are the costs associated with real property treated in the YouthBuild program?

(a) As provided in paragraphs (b) and (c) of this section, the costs of the following activities associated with real property are allowable solely for the purpose of training YouthBuild participants:

(1) Rehabilitation of existing structures for use by homeless individuals and families or low-income families or for use as transitional housing.

(2) Construction of buildings for use by homeless individuals and families or low-income families or for use as transitional housing.

(3) Construction or rehabilitation of community or other public facilities, except, as provided in § 672.510(b), only

10 percent of the grant award is allowable for such construction and rehabilitation.

(b) The costs for acquisition of buildings that are used for activities described in paragraph (a) of this section are allowable with prior grant officer approval and only under the following conditions:

(1) The purchase cost of buildings used solely for training purposes is allowable; and

(2) For buildings used for training and other purposes, the allowable amount is determined based on the proportionate share of the purchase cost related to direct training.

(c) The following costs are allowable to the extent allocable to training YouthBuild participants in the construction and rehabilitation activities specified in paragraph (a) of this section:

(1) Trainees' tools and clothing including personal protective equipment (PPE);

(2) On-site trainee supervisors;

(3) Construction management;

(4) Relocation of buildings; and

(5) Clearance and demolition.

(d) Architectural fees, or a proportionate share thereof, are allowable when such fees can be related to items such as architectural plans or blueprints on which participants will be trained.

(e) The following costs are unallowable:

(1) The costs of acquisition of land.

(2) Brokerage fees.

§ 672.530 What participant costs are allowable under the YouthBuild program?

Allowable participant costs include:

(a) The costs of payments to participants engaged in eligible work-related YouthBuild activities.

(b) The costs of payments provided to participants engaged in non-work-related YouthBuild activities.

(c) The costs of needs-based stipends.

(d) The costs of supportive services.

(e) The costs of providing additional benefits to participants or individuals who have exited the program and are receiving follow-up services, which may include:

(1) Tuition assistance for obtaining college education credits;

(2) Scholarships to an Apprenticeship, Technical, or Secondary Education program; and

(3) Sponsored health programs.

§ 672.535 What effect do payments to YouthBuild participants have on eligibility for other Federal need-based benefits?

Under 20 CFR 667.272(c), allowances, earnings, and payments to individuals participating in programs under Title I of WIA are not considered as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally-assisted program based on need other than as provided under the Social Security Act (42 U.S.C. 301).

§ 672.540 What program income requirements apply under the YouthBuild program?

(a) Except as provided in paragraph (b) of this section, program income requirements, as specified in the applicable Uniform Administrative Requirements at 29 CFR 95.24 and 97.25, apply to YouthBuild grants.

(b) Revenue from the sale of buildings rehabilitated or constructed under the YouthBuild program to homeless individuals and families and low-income families is not considered program income. Grantees are encouraged to use that revenue for the long-term sustainability of the YouthBuild program.

§ 672.545 Are YouthBuild programs subject to the Davis-Bacon Act labor standards?

(a) YouthBuild programs and grantees are subject to Davis-Bacon labor standards requirements under the circumstances set forth in paragraph (b) of this section. In those instances where a grantee is subject to Davis-Bacon requirements, the grantee must follow applicable requirements in the Department's regulations at 29 CFR parts 1, 3, and 5, including the requirements contained in the Davis-Bacon contract provisions set forth in 29 CFR 5.5.

(b) YouthBuild participants are subject to Davis-Bacon Act labor standards when they perform Davis-Bacon-covered laborer or mechanic work, defined at 29 CFR 5.2, on Federal or Federally-assisted projects that are subject to the Davis-Bacon Act labor standards. The Davis-Bacon prevailing wage requirements apply to hours worked on the site of the work.

(c) YouthBuild participants who are not registered and participating in a training program approved by the Employment and Training Administration must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

§ 672.550 What are the recordkeeping requirements for YouthBuild programs?

(a) Grantees must follow the recordkeeping requirements specified in the Uniform Administrative Requirements, at 29 CFR 95.53 and 29 CFR 97.42, as appropriate.

(b) Grantees must maintain such additional records related to the use of buildings constructed or rehabilitated with YouthBuild funds as specified in the grant agreement or in the Department's guidance.

Subpart F—Additional Requirements

§ 672.600 What are the safety requirements for the YouthBuild program?

(a) YouthBuild Grantees must comply with 20 CFR 667.274, which applies Federal and State health and safety standards to the working conditions under WIA-funded projects and programs. These health and safety standards include ''hazardous orders'' governing child labor under 29 CFR part 570 prohibiting youth ages 16 and 17 from working in identified hazardous occupations.

(b) YouthBuild grantees are required to:

(1) Provide comprehensive safety training for youth working on YouthBuild construction projects;

(2) Have written, jobsite-specific, safety plans overseen by an on-site supervisor with authority to enforce safety procedures;

(3) Provide necessary personal protective equipment to youth working on YouthBuild projects; and

(4) Submit required injury incident reports.

§ 672.605 What are the reporting requirements for youth safety?

YouthBuild grantees must ensure that YouthBuild program sites comply with the Occupational Safety and Health Administration's (OSHA) reporting requirements in 29 CFR part 1904. A YouthBuild grantee is responsible for sending a copy of OSHA's injury incident report form, to U.S. Department of Labor, Employment and Training Administration within 7 days of any reportable injury suffered by a YouthBuild participant. The injury incident report form is available from OSHA and can be downloaded at *http://www.osha.gov/recordkeeping/RKforms.html.* Reportable injuries include those that result in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness.

§ 672.610 What environmental protection laws apply to the YouthBuild program?

YouthBuild Program grantees are required, where applicable, to comply with all environmental protection statutes and regulations.

§ 672.615 What requirements apply to YouthBuild housing?

(a) YouthBuild grantees must ensure that all residential housing units which are constructed or rehabilitated using YouthBuild funds must be available solely for:

(1) Sale to homeless individuals and families or low-income families;

(2) Rental by homeless individuals and families or low-income families;

(3) Use as transitional or permanent housing for the purpose of assisting in the movement of homeless individuals and families to independent living; or

(4) Rehabilitation of homes for low-income homeowners.

(b) For rentals of residential units located on the property which are constructed or rehabilitated using YouthBuild funds:

(1) The property must maintain at least a 90 percent level of occupancy for low-income families. The income test will be conducted only at the time of entry for each available unit or rehabilitation of occupant-owned home. If the grantee cannot find a qualifying tenant to lease the unit, the unit may be leased to a family whose income is above the income threshold to qualify as a low-income family but below the median income for the area. Leases for tenants with higher incomes will be limited to not more than two years. The leases provided to tenants with higher incomes are not subject to the termination clause that is described in paragraph (b)(2) of this section.

(2) The property owner must not terminate the tenancy or refuse to renew the lease of a tenant occupying a residential rental housing unit constructed or rehabilitated using YouthBuild funds except for serious or repeated violations of the terms and conditions of the lease, for violation of applicable Federal, State or local laws, or for good cause. Any termination or refusal to renew the lease must be preceded by not less than a 30-day written notice to the tenant specifying the grounds for the action. The property owner may waive the written notice requirement for termination in dangerous or egregious situations involving the tenant.

(c) All transitional or permanent housing for homeless individuals or families or low-income families must be safe and sanitary. The housing must meet all applicable State and local housing codes and licensing requirements in the jurisdiction in which the housing is located.

(d) For sales or rentals of residential housing units constructed or rehabilitated using YouthBuild funds, YouthBuild grantees must ensure that owners of the property record a restrictive covenant at the time that an occupancy permit is issued against such property which includes the use restrictions set forth in paragraphs (a), (b), and (c) of this section and incorporates the following definitions at § 672.110: Homeless Individual; Low-Income Housing; and Transitional Housing. The term of the restrictive covenant must be at least 10 years from the time of the issuance of the occupancy permit, unless a time period of more than 10 years has been established by the grantee. Any additional stipulations imposed by a grantee or property owner should be clearly stated in the covenant.

(e) Any conveyance document prepared in the 10-year period of the restrictive covenant must inform the buyer of the property that all residential housing units constructed or rehabilitated using YouthBuild funds are subject to the restrictions set forth in paragraphs (a), (b), (c), and (d) of this section.

Signed at Washington, DC, this 26th day of January 2012.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

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Part V

Department of Health and Human Services

45 CFR Parts 60 and 61
National Practitioner Data Bank; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 60 and 61

RIN 0906–AA87

National Practitioner Data Bank

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule revises existing regulations under sections 401–432 of the Health Care Quality Improvement Act of 1986 and section 1921 of the Social Security Act, governing the National Practitioner Data Bank, to incorporate statutory requirements under section 6403 of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act), Public Law 111–148. The Department of Health and Human Services (HHS) also is removing Title 45 of the Code of Federal Regulations (CFR) part 61, which implemented the Healthcare Integrity and Protection Data Bank.

Section 6403 of the Affordable Care Act, the statutory authority for this regulatory action, was designed to eliminate duplicative data reporting and access requirements between the Healthcare Integrity and Protection Data Bank (established under section 1128E of the Social Security Act) and the National Practitioner Data Bank. Section 6403 of the Affordable Care Act requires the Secretary to establish a transition period to transfer all data in the Healthcare Integrity and Protection Data Bank to the National Practitioner Data Bank, and, once completed, to cease operations of the Healthcare Integrity and Protection Data Bank. Information previously collected and disclosed through the Healthcare Integrity and Protection Data Bank will then be collected and disclosed through the National Practitioner Data Bank. This regulatory action consolidates the collection and disclosure of information from both data banks into one part of the CFR.

DATES: We invite comments on this proposed rule. To be considered, submit comments on or before April 16, 2012.

ADDRESSES AND MODE OF TRANSMISSION FOR COMMENTS: You may submit comments in one of three ways, as listed below. The first is the preferred method. To avoid duplication, please submit your comments in only *one* of these ways.

1. *Federal eRulemaking Portal.* You may submit comments electronically to *http://www.regulations.gov.* Click on the link ''Submit a comment'' and enter the file code ''# HRSA–0906–AA87'' in the ID field. Submit your actual comments as an attachment to your message or cover letter. (Attachments should be in Microsoft Word or WordPerfect; however, we prefer Microsoft Word.)

2. *By regular, express or overnight mail.* You may mail written comments to the following address only: Health Resources and Services Administration, Department of Health and Human Services, Attention: HRSA Regulations Officer, Parklawn Building Rm. 14–101, 5600 Fishers Lane, Rockville, MD 20857. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *Delivery by hand (in person or by courier).* If you prefer, you may deliver your written comments before the close of the comment period to the same address: Parklawn Building Room 14–101, 5600 Fishers Lane, Rockville, MD 20857. Please call (301) 443–1785 in advance to schedule your arrival with one of our HRSA Regulations Office staff members.

Because of staffing and resource limitations, and to ensure that no comments are misplaced, we cannot accept comments by facsimile (FAX) transmission.

In commenting, please refer to file code # HRSA–0906–AA87. Comments received on a timely basis will be available for public inspection as they are received in Room 14–101 of the Health Resources and Services Administration, 5600 Fishers Lane, Rockville, MD., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 301–443–1785).

We will consider all comments we receive by the date and time specified in the Dates section of this preamble, and will respond to the comments in the preamble of the final rule.

FOR FURTHER INFORMATION CONTACT: Cynthia Grubbs, Director, Division of Practitioner Data Banks, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Room 8–103, Rockville, MD 20857; telephone number: (301) 443–2300.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legal Authorities Governing the Data Banks

The paragraphs below provide a summary of the legal authorities governing the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

(1.) The Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 *et seq.*)

The National Practitioner Data Bank (NPDB) was established by the Health Care Quality Improvement Act of 1986 (HCQIA), as amended (42 U.S.C. 11101 *et seq.*). The HCQIA authorizes the NPDB to collect reports of adverse licensure actions against physicians and dentists (including revocations, suspensions, reprimands, censures, probations, and surrenders); adverse clinical privileges actions against physicians and dentists; adverse professional society membership actions against physicians and dentists; Drug Enforcement Administration (DEA) certification actions; Medicare/Medicaid exclusions; and medical malpractice payments made for the benefit of any health care practitioner. Organizations that have access to this data system include hospitals, other health care entities that have formal peer review processes and provide health care services, State medical or dental boards and other health care practitioner State boards. Individual practitioners may self-query. Information under the HCQIA is reported by medical malpractice payers, State medical and dental boards, professional societies with formal peer review, and hospitals and other health care entities (such as health maintenance organizations).

(2.) Section 1921 of the Social Security Act (42 U.S.C. 1396r–2) (Prior to the Passage of the Affordable Care Act)

Section 1921 of the Social Security Act (herein referred to as section 1921), as amended by section 5(b) of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93, and as amended by the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, expanded the scope of the NPDB. Section 1921 requires each State to adopt a system for reporting to the Secretary certain adverse licensure actions taken against health care practitioners and entities by any authority of the State responsible for the licensing of such practitioners or entities. It also requires each State to report any negative action or finding that a State licensing authority, a peer review organization, or a private accreditation entity had taken against a health care practitioner or health care entity.

Groups with access to this information include all organizations eligible to query the NPDB under the HCQIA (hospitals, other health care entities that have formal peer review and provide health care services, State

medical or dental boards, and other health care practitioner State boards), other State licensing authorities, agencies administering Federal health care programs (including private entities administering such programs under contract), State agencies administering or supervising the administration of State health care programs, State Medicaid fraud control units, certain law enforcement agencies, and utilization and quality control Quality Improvement Organizations (QIOs). Individual health care practitioners and entities may self-query. Information under section 1921 is reported by State licensing and certification authorities, peer review organizations, and private accreditation entities.

Final regulations implementing section 1921 were issued on January 28, 2010 (75 FR 4656). The NPDB began collecting and disclosing section 1921 information on March 1, 2010.

(3.) Section 1128E of the Social Security Act (42 U.S.C. 1320a–7e) (Prior to the Passage of the Affordable Care Act)

Section 1128E of the Social Security Act (herein referred to as section 1128E), as added by section 221(a) of the Health Insurance Portability and Accountability Act of 1996, Public Law 104–191, directed the Secretary to establish and maintain a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care practitioners, providers, or suppliers. This data bank is known as the Healthcare Integrity and Protection Data Bank (HIPDB). Section 1128E required Federal and State government agencies and health plans to report to the HIPDB the following final adverse actions: Licensing and certification actions; criminal convictions and civil judgments related to the delivery of health care services; exclusions from Federal or State health care programs; and other adjudicated actions or decisions. Federal and State government agencies and health plans have access to this information. Individual practitioners, providers, and suppliers may self-query the HIPDB.

The HIPDB began collecting reports in November 1999. Requirements of both HCQIA and section 1921 overlap with the requirements under section 1128E, although each law has unique characteristics, including differences in the types of reportable actions and the types of agencies, entities, and officials with access to information. For example, all three reporting schemes require the reporting of State licensure actions. The HCQIA, however, only requires the reporting of licensure actions taken against physicians and dentists that are based on professional competence or conduct. In contrast, sections 1921 and 1128E do not have a requirement that reportable adverse licensure actions be based on professional competence or conduct and also differ in the types of subjects reported. In addition, sections 1921 and 1128E authorize access to many of the same types of agencies, organizations, and officials. For example, both statutes authorize access by law enforcement agencies, agencies that administer or pay for health care services or programs, and State licensing authorities. Private-sector hospitals and health care service providers are only able to access information reported under the HCQIA and section 1921, but not under section 1128E.

(4.) Section 6403 of the Patient Protection and Affordable Care Act of 2010

Section 6403 of the Patient Protection and Affordable Care Act of 2010 (hereinafter referred to as section 6403), Public Law 111–148, amends sections 1921 and 1128E to eliminate duplication between the HIPDB and the NPDB, and requires the Secretary to establish a transition period for transferring data collected in the HIPDB to the NPDB and to cease HIPDB operations. Information previously collected and disclosed through the HIPDB will then be collected and disclosed through the NPDB. No new data elements have been added as a result of section 6403. All actions currently reported in the NPDB and HIPDB will be reported to the NPDB.

All security standards that are currently in place to protect the confidentiality of information in the Data Banks will be retained. HRSA follows the National Institute of Standards and Technology (NIST) security guidelines. More specifically, the Data Bank has extensive operational, management, and technical controls that ensure the security of the system and protect the data in the system. The Data Bank contains information classified under the Privacy Act that is considered personally identifiable information (PII). On an annual basis, the Data Bank conducts a detailed security review process that tests the effectiveness of the security controls to ensure the PII in the system remains safe. Finally, every three years, the Data Bank is Certified and Accredited (C&A) as a requirement to have an Authority to Operate (ATO), in order to function as a Federal system.

The specific amendments section 6403 makes to sections 1921 and 1128E are described in greater detail in the paragraphs below.

Subsection (a) of section 6403 amends section 1128E to require reporting to the NPDB instead of the HIPDB. Subsection (a) also eliminates requirements in section 1128E related to reporting by State agencies; conforms the requirements for reporting Federal licensing and certification actions to those that apply to State agencies under section 1921; provides that the information reported pursuant to section 1128E will be available to the agencies, entities, and officials authorized to access information reported pursuant to section 1921; and authorizes the Secretary to establish reasonable fees for the disclosure of the information, with no exception from the fee for Federal government agencies. Finally, subsection (a) requires the Secretary, in implementing the amendments to section 1128E, to provide for the maximum appropriate coordination between part B of the HCQIA and section 1921.

Subsection (b) of section 6403 adds to section 1921 the State agency reporting requirements that were eliminated from section 1128E by subsection (a). These State actions, taken against health care practitioners, providers, and suppliers, include State licensing and certification actions, State health care-related criminal convictions and civil judgments, exclusions from State health care programs, and other adjudicated actions or decisions. Subsection (b) also conforms the requirements for reporting State licensing and certification actions to those that apply to Federal agencies under section 1128E and makes amendments to expand the data access provisions of section 1921(b) so that entities that were authorized to access final adverse action information reported to the HIPDB by State agencies under section 1128E will retain access to that information when it is reported to the NPDB under section 1921. Subsection (b) also adds new provisions under section 1921 that are modeled on similar provisions in section 1128E. These new provisions require the Secretary to disclose reported information to a subject of a report and establish other requirements designed to ensure that the information reported pursuant to section 1921 is accurate; authorize the Secretary to establish or approve reasonable fees for the disclosure of information reported pursuant to section 1921; and provide protection against liability in a civil action for entities reporting information as required by section 1921 (so long as such entities have no knowledge of the falsity of the information). Subsection

(b) also provides definitions for the following terms: (1) ''State licensing or certification agency;'' (2) ''State law or fraud enforcement agency;'' and (3) ''final adverse action.'' Finally, subsection (b) requires the Secretary, in implementing the amendments to section 1921, to provide for the maximum appropriate coordination with HCQIA and section 1128E.

Subsection (c) of section 6403 amends section 1128C of the Social Security Act regarding the HHS Office of Inspector General's responsibilities with respect to section 1128E by deleting the HHS Office of Inspector General's responsibility to provide for the reporting and disclosure of certain final adverse actions against health care providers, suppliers, or practitioners pursuant to the data collection system established under section 1128E. Subsection (d) establishes requirements for a transition process; authorizes the Department of Veterans Affairs to access, free of charge for one year, information that was formerly reported only to the HIPDB; describes the availability of additional funds for the transition process, if necessary; and includes the effective date for the section.

Effectively, in addition to transferring HIPDB data and operations to the NPDB, section 6403 transfers all section 1128E reporting requirements by State agencies to section 1921, thereby eliminating duplication in certain State agency reporting requirements under both statutes, while leaving Federal agency and health plan reporting requirements under the authority of section 1128E. Section 6403 also creates a common list of queriers for section 1921 and section 1128E data. There are exceptions to this common querier list. Hospitals and other health care entities, professional societies, and QIOs have access to section 1128E data as well as licensing and certification actions under section 1921, but have no additional access to data as a result of section 6403. By maintaining many of the same reporting requirements and by maintaining different levels of access depending on who is requesting information in section 6403, Congress further indicated its intent that, despite the transition of HIPDB operations to the NPDB, original reporting and querying requirements remain the same to the greatest extent possible, while ensuring the maximum coordination among the three statutes. Section 6403 does not affect reporting requirements or query access under the HCQIA, so existing requirements under the HCQIA for hospitals, other health care entities, professional societies, or medical malpractice payers will not change.

The reporting and querying requirements of sections 1921 and 1128E, as amended by section 6403, are described in greater detail below.

B. Section 1921 as Amended by Section 6403

As amended by section 6403, section 1921 requires each State to have in effect a system of reporting licensure and certification actions taken against a health care practitioner or entity by a State licensing or certification agency. Section 6403 defines a State licensing or certification agency to include State licensing authorities, peer review organizations, and private accreditation entities. Licensing and certification actions include certain adverse actions taken by a State licensing authority as well as any negative action or finding that a State licensing authority, a peer review organization, or a private accreditation entity has concluded against a health care practitioner or entity. Each State also must have in effect a system of reporting information with respect to any final adverse action (not including settlements in which no findings of liability have been made) taken against a health care practitioner, provider, or supplier by a State law or fraud enforcement agency. These final adverse actions include criminal convictions or civil judgments in State court related to the delivery of health care services, exclusions from participation in a State health care program, and any other adjudicated action or decision. In addition, final adverse actions include any licensure or certification action taken against a supplier by a State licensing or certification agency. Section 1921 information is now available to agencies administering Federal health care programs, including private entities administering such programs under contract; State licensing or certification agencies, and Federal agencies responsible for the licensing and certification of health care practitioners, providers, and suppliers; State agencies administering or supervising the administration of State health care programs; health plans; State law or fraud enforcement agencies; and the U.S. Attorney General and other law enforcement officials as the Secretary deems appropriate. In addition, QIOs, as well as hospitals, professional societies, and other health care entities have access to ''licensure and certification actions'' reported under section 1921. These entities do not have access to ''final adverse actions'' added to section 1921 by section 6403. Potential subjects of section 1921 reports, including health care practitioners, health care entities, providers, and suppliers, may self-query.

C. Section 1128E, as Amended by Section 6403

Section 6403 amends section 1128E to require the Secretary to maintain a national health care fraud and abuse data collection program under this section for the reporting of certain final adverse actions against health care practitioners, providers, and suppliers. The Secretary shall furnish the information collected under section 1128E to the NPDB. Federal government agencies and health plans are required to report to the NPDB the following final adverse actions: licensing and certification actions; criminal convictions and civil judgments in Federal or State court related to the delivery of health care services; exclusions from Federal health care programs; and other adjudicated actions or decisions.

The information collected under section 1128E shall be available from the National Practitioner Data Bank to all agencies, authorities, and officials which are authorized under the amended section 1921 access provisions. However, under the section 1921 access provisions, hospitals, other health care entities, professional societies, and QIOs are only authorized to receive certain section 1921 information. Individual practitioners, providers, and suppliers may self-query the NPDB to receive section 1128E information.

The table below further illustrates the impact that section 6403 has on current data bank requirements, presenting the requirements for the HCQIA, section 1921 and 1128E before the passage of section 6403, and the proposed requirements after passage of section 6403.

The table is only a summary of the statutory reporting and querying requirements before and after passage of section 6403. All elements in the table, including definitions of terms used, are detailed in various sections of this proposed rule.

TABLE 1—DATA BANKS STATUTORY REQUIREMENTS BEFORE AND AFTER PASSAGE OF SECTION 6403*

Statutory requirements before passage of Section 6403	Reporting/querying requirements after passage of Section 6403
WHO REPORTS?	*WHO REPORTS?*
HCQIA (NPDB) ■Medical malpractice payers ■Boards of Medical/Dental Examiners ■Hospitals and other healthcare entities ■Professional societies with formal peer review ■Drug Enforcement Administration ■Health and Human Services—Office of Inspector General	HCQIA (NPDB) ■Medical malpractice payers ■Boards of Medical/Dental Examiners ■Hospitals and other health care entities ■Professional societies with formal peer review ■Drug Enforcement Administration ■Health and Human Services-Office of Inspector General
SECTION 1921 (NPDB) ■Peer review organizations ■Private accreditation organizations ■State authorities that license practitioners and entities	SECTION 1921 (NPDB) ■Peer review organizations ■Private accreditation organizations ■State authorities that license or certify practitioners, entities, providers, suppliers ■State law or fraud enforcement agencies
SECTION 1128E (HIPDB) ■Federal and State government agencies (including State law or fraud enforcement agencies) ■Health plans	SECTION 1128E (NPDB) ■Federal government agencies ■Health plans
WHAT INFORMATION IS REPORTED?	*WHAT INFORMATION IS REPORTED?*
HCQIA (NPDB) ■Medical malpractice payments ■Adverse licensure actions (physicians/dentists): —revocation, suspension, reprimand, probation, surrender, censure ■Adverse clinical privileges actions (primarily physicians/dentists) ■Adverse professional society membership (primarily physicians/dentists) ■DEA certification actions ■Medicare/Medicaid exclusions	HCQIA (NPDB) ■Medical malpractice payments ■Adverse licensure actions (physicians/dentists): —revocation, suspension, reprimand, probation, surrender, censure ■Adverse clinical privileges actions (primarily physicians/dentists) ■Adverse professional society membership (primarily physicians/dentists) ■DEA certification actions ■Medicare/Medicaid exclusions
SECTION 1921 (NPDB) ■Licensing actions (practitioners and entities): —revocation, reprimand, censure, suspension, probation —any dismissal or closure of the proceedings by reason of surrendering the license or leaving the State or jurisdiction —any other loss of the license —any negative action or finding by a State licensing authority, peer review organization, or private accreditation entity	SECTION 1921 (NPDB) ■Licensing or certification actions (practitioners, entities, providers, and suppliers): —revocation, reprimand, censure, suspension, probation —any dismissal or closure of the proceedings by reason of surrendering the license or leaving the State or jurisdiction —any other loss of, or loss of the right to apply for, or renew a license —any negative action or finding by a State licensing or certification authority, peer review organization, or private accreditation entity ■Health care-related civil judgments in State court (practitioners, providers, suppliers) ■Health care-related State criminal convictions (practitioners, providers, suppliers) ■Exclusions from State health care programs (practitioners, providers, suppliers) ■Other adjudicated actions or decisions (practitioners, providers, suppliers)
SECTION 1128E (HIPDB) ■Licensing and certification actions (practitioners, providers, and suppliers): —revocation, reprimand, suspension, censure, probation; —any other loss of license, or right to apply for, or renew, a license, whether by voluntary surrender, non-renewability, or otherwise —any other negative action or finding that is publicly available information ■Health care-related civil judgments in Federal or State court (practitioners, providers, suppliers) ■Health care-related Federal or State criminal convictions (practitioners, providers, suppliers) ■Exclusions from Federal or State health care programs (practitioners, providers, suppliers) ■Other adjudicated actions or decisions (practitioners, providers, suppliers)	SECTION 1128E (NPDB) ■Federal licensing/certification actions (practitioners, providers, and suppliers): —revocation, reprimand, censure, suspension, probation —any dismissal or closure of the proceedings by reason of surrendering the license or leaving the State or jurisdiction —any other loss of, or right to apply for, or renew, a license, whether by voluntary surrender, non-renewability, or otherwise —any negative action or finding that is publicly available information ■Health care-related civil judgments in Federal or State court (practitioners, providers, suppliers) ■Health care-related Federal or State criminal convictions (practitioners, providers, suppliers) ■Exclusions from Federal health care programs (practitioners, providers, suppliers) ■Other adjudicated actions or decisions (practitioners, providers, suppliers)

TABLE 1—DATA BANKS STATUTORY REQUIREMENTS BEFORE AND AFTER PASSAGE OF SECTION 6403*—Continued

Statutory requirements before passage of Section 6403	Reporting/querying requirements after passage of Section 6403
WHO CAN QUERY?	*WHO CAN QUERY?*
HCQIA (NPDB) ■Hospitals ■Other health care entities with formal peer review ■Professional societies with formal peer review ■Boards of Medical/Dental Examiners ■Other health care practitioner State licensing boards ■Plaintiff's attorney/pro se plaintiffs (limited circumstances) ■Health care practitioners (self-query) ■Researchers (statistical data only)	HCQIA (NPDB) ■Hospitals ■Other health care entities with formal peer review ■Professional societies with formal peer review ■Boards of Medical/Dental Examiners ■Other health care practitioner State licensing boards ■Plaintiff's attorney/pro se plaintiffs (limited circumstances) ■Health care practitioners (self-query) ■Researchers (statistical data only)
SECTION 1921 (NPDB) ■Hospitals and other health care entities (HCQIA) ■Professional societies with formal peer review ■Quality Improvement Organizations ■State licensing agencies that license practitioners and entities ■Agencies administering Federal health care programs, or their contractors ■State agencies administering State health care programs ■State Medicaid fraud control units ■U.S. Comptroller General ■U.S. Attorney General and other law enforcement ■Health care practitioners/entities (self-query) ■Researchers (statistical data only)	SECTION 1921 and SECTION 1128E (NPDB) ■Hospitals and other health care entities (HCQIA)** ■Professional societies with formal peer review** ■Quality Improvement Organizations** ■State licensing or certification agencies that license or certify practitioners, entities, providers, or suppliers ■Agencies administering (including those providing payment for services) Federal health care programs and their contractors ■State agencies administering State health care programs ■Federal agencies that license or certify practitioners, providers, suppliers ■Health plans ■State law or fraud enforcement agencies (including State Medicaid fraud control units) ■U.S. Comptroller General ■U.S. Attorney General and other Federal law enforcement ■Health care practitioners, entities, providers, suppliers (self-query) ■Researchers (statistical data only).
SECTION 1128E (HIPDB) ■Federal and State government agencies ■Health plans ■Health care practitioners/providers/suppliers (self-query) ■Researchers (statistical data only)	

* For NPDB requirements, the term ''practitioners'' is used throughout this table to mean ''practitioners, physicians, dentists.''
** Under Section 1921, these entities only have access to reported licensing or certification actions, which is consistent with these entities' access prior to passage of the Affordable Care Act.

D. Maximum Coordination When Implementing Section 6403

Sections 6403(a)(3) and 6403(b)(4) require the Secretary to provide for the maximum appropriate coordination among HCQIA, section 1921, and section 1128E when implementing the provisions of section 6403. We have made significant efforts to develop this proposed rule in a manner that minimizes the burden on reporters. Reporters previously responsible for reporting adverse actions to both the NPDB and HIPDB only needed to submit one report per action, provided that reporting was done through the Department's web-based system that sorted the appropriate actions into the HIPDB, the NPDB, or both. Similarly, under the revised regulations, reporters will only need to submit one report per action.

Congress's mandate that the Secretary provide for the maximum appropriate coordination among the statutes makes it necessary, in certain cases, to make slight modifications when combining sometimes overlapping statutory requirements. These instances are described in the paragraphs below, and in the discussion of the proposed regulatory definitions.

E. Terms Used To Describe Subjects of Reports Under Section 1921 and 1128E

We clarified statutory language used to describe report subjects in several ways. First, we used the term ''health care practitioner, physician, and dentist'' throughout these regulations to refer to ''health care practitioner'' report subjects for sections 1921 and 1128E. We are clarifying that the ''health care practitioner'' report subjects under both sections 1921 and 1128E include health care practitioners, physicians, and dentists to help ensure consistency in the merged data, as the NPDB definition of ''health care practitioner'' excludes physicians and dentists whereas the HIPDB definition includes physicians and dentists. The definitions for physician and dentist are provided for separately and therefore they are included as report subjects.

Second, we clarified statutory language with respect to report subjects by consistently using the term ''entity, provider, and supplier'' in referring to section 1921 entity report subjects. Both original and amended section 1921 reporting requirements include certain adverse actions taken against a ''health care practitioner or entity,'' and NPDB regulations use the HCQIA definition of ''health care entity'' to define the range of these report subjects. It is clear from the context of section 6403 that the use of the term ''entity'' also includes ''supplier'' subjects. Specifically, section 6403(b), which added the disclosure and correction provision in section 1921(d), refers only to ''health care practitioner'' and ''entity'' report subjects. It is not reasonable to conclude that Congress intended to prevent providers and suppliers from having access to their own reports or being able to dispute a report, while giving that ability to health care practitioners and entities. Although the provision only uses the terms practitioner and entity it must be read broadly to keep the Congressional intent of not making significant changes to current reporting and querying requirements. Therefore, we apply this provision to all section 1921 report subjects, including health care practitioners, physicians, dentists, entities, providers, and suppliers.

Finally, the proposed rule sometimes refers to ''practitioner, physician, dentist, provider, and supplier'' as one grouping. The manner in which the regulation defines supplier may be read to include physicians and dentists. In the proposed rule, where physicians

and dentists are specified, but other suppliers are not, it is intended that other suppliers are not included in those instances. Where suppliers are mentioned along with physicians and dentists, the intent is not to imply that suppliers do not include physicians and dentists, but that all terms were included for the sake of clarity.

F. Sanction Authority

HIPDB regulations include sanctions against Federal and State agencies and health plans for failure to report as required. For Federal and State government agencies, the Secretary provides for publication of a public report that identifies those agencies that have failed to report information as required. Health plans that fail to report information as required under section 1128E are subject to a civil money penalty of up to $25,000 for each action not reported. While section 6403 transfers State agency reporting requirements from section 1128E to section 1921, we plan to maintain existing sanction authority (publication of a public report) for those State agencies that are required to report licensure and certification actions, exclusions from State health care programs, criminal convictions and civil judgments in a State court, and other adjudicated actions or decisions. Further, we plan to maintain existing sanction authority, as stated above, and which currently exists in section 1128E, for those Federal agencies that fail to report. These sanctions are currently part of the agency's compliance plan, and we are attempting to maintain consistency between current and future Data Bank operational policy.

G. Authorization Dates for Collecting Reports

The authorization dates for collecting adverse actions under section 1921 and section 1128E are based on the original legislation for the requirements and are unchanged by the passage of section 6403. Amendments made by section 6403 represent a reorganization of existing statutory requirements and not an imposition of new actions. Therefore, the passage section 6403 does not affect reporters' obligations to report action back to the dates currently in use for the system. Actions taken by State agencies transferred from section 1128E to section 1921 will retain their original authorization dates.

H. Limitations on the Scope of Public Comment

The current regulations governing the NPDB which are not expanded or modified by section 6403 are not subject to review or comment under this Notice of Proposed Rulemaking, e.g., reporting requirements for medical malpractice payers, and eligible entities that may query the NPDB under the authority of the HCQIA.

II. Provisions of the Proposed Rule

We describe the proposed amendments below according to the sections of the regulations which they affect.

Sec. 60.1 The National Practitioner Data Bank

The proposed rule amends this section by incorporating the statutory provisions for section 1128E of the Social Security Act.

Sec. 60.2 Applicability of These regulations

The proposed rule amends this section by revising the reporting requirements to include those organizations and agencies required to report under section 1921 and section 1128E (both as amended by section 6403).

Sec. 60.3 Definitions

The proposed rule adds existing definitions from the HIPDB regulations as well as new statutory definitions to this section. Because this proposed rule combines requirements already specified in current NPDB and HIPDB regulations, it was necessary to modify the regulatory definitions for certain terms or combine similar regulatory definitions for the same term. In one instance, for the term ''Act,'' a definition is deleted in its entirety. We believe this approach is consistent with the mandate that the Secretary provide for the maximum appropriate coordination among the HCQIA, section 1921, and section 1128E. This proposed rule also clarifies new statutory definitions. These clarifications merely provide additional examples of the scope of the definitions.

As a result, we propose to add the following new terms to this section, which are in the current HIPDB regulations:

Civil judgment means a court-ordered action rendered in a Federal or State court proceeding, other than a criminal proceeding. This reporting requirement does not include consent judgments that have been agreed upon and entered to provide security for civil settlements in which there was no finding or admission of liability.

The term ''civil judgment'' is currently defined in the HIPDB regulations, and we have not modified this existing definition.

Criminal conviction means a conviction as described in section 1128(i) of the Social Security Act.

The term ''criminal conviction'' is currently defined in the HIPDB regulations, and we have not modified this existing definition.

Exclusion means a temporary or permanent debarment of an individual or entity from participation in any Federal or State health-related program, in accordance with which items or services furnished by such person or entity will not be reimbursed under any Federal or State health-related program.

The term ''exclusion'' is currently defined in the HIPDB regulations, and we have not modified this existing definition.

Federal government agency includes, but is not limited to:

(a) The U.S. Department of Justice;

(b) The U.S. Department of Health and Human Services;

(c) Federal law enforcement agencies, including law enforcement investigators;

(d) Any other Federal agency that either administers or provides payment for the delivery of health care services, including, but not limited to the U.S. Department of Defense and the U.S. Department of Veterans Affairs; and

(e) Federal agencies responsible for the licensing and certification of health care practitioners, physicians, dentists, providers, and suppliers.

The definition of the term ''government agency'' is set forth in section 1128E(g)(3) of the Social Security Act to describe the range of Federal government agencies that are required to report under section 1128E (as revised by section 6403). These proposed rules refer to the section 1128E term, ''government agencies,'' as ''Federal government agencies'' to provide clarification between the Federal agencies required to report under section 1128E and certain State agencies (which are defined separately) that must report under section 1921. These proposed rules specify that the definition includes, but is not limited to, those agencies listed.

Health care provider means, for the purposes of this part, a provider of services as defined in section 1861(u) of the Social Security Act; any health care organization (including a health maintenance organization, preferred provider organization, or group medical practice) that provides health care services and follows a formal peer review process for the purpose of furthering quality health care, and any other health care organization that, directly or through contracts, provides health care services.

The term ''health care provider'' is currently defined in HIPDB regulations. We slightly modified this definition by replacing the phrase ''means a provider'' with ''means, for purposes of this part, a provider'' to avoid any confusion with the manner that Medicare defines such term.

Health care supplier means, for the purposes of this part, a provider of medical and other health care services as described in section 1861(s) of the Social Security Act; or any individual or entity, other than a provider, who furnishes, whether directly or indirectly, or provides access to, health care services, supplies, items, or ancillary services (including, but not limited to, durable medical equipment suppliers, manufacturers of health care items, pharmaceutical suppliers and manufacturers, health record services such as medical, dental, and patient records, health data suppliers, and billing and transportation service suppliers). The term also includes any individual or entity under contract to provide such supplies, items, or ancillary services; health plans as defined in this section (including employers that are self-insured); and health insurance producers (including, but not limited to agents, brokers, solicitors, consultants, and reinsurance intermediaries).

The term ''health care supplier'' is currently defined in HIPDB regulations. We slightly modified this definition by replacing the phrase ''means a provider'' with ''means, for purposes of this part, a provider'' to avoid any confusion with the manner that Medicare defines such term.

Health plan means, for the purposes of this part, a plan, program, or organization that provides health benefits, whether directly, through insurance, reimbursement, or otherwise, and includes but is not limited to:

(a) A policy of health insurance;

(b) A contract of a service benefit organization;

(c) A membership agreement with a health maintenance organization or other prepaid health plan;

(d) A plan, program, agreement, or other mechanism established, maintained, or made available by a self-insured employer or group of self-insured employers, a health care practitioner, physician, dentist, provider, or supplier group, third-party administrator, integrated health care delivery system, employee welfare association, public service group, or organization or professional association;

(e) An insurance company, insurance service, or insurance organization that is licensed to engage in the business of selling health care insurance in a State and which is subject to State law which regulates health insurance; and

(f) An organization that provides benefit plans whose coverage is limited to outpatient prescription drugs.

The term ''health plan'' is currently defined in the HIPDB regulations. We slightly modified this definition by replacing the phrase ''practitioner, provider, or supplier'' with the phrase ''health care practitioner, physician, dentist, provider, or supplier.'' We slightly modified this definition by replacing the phrase ''means a plan'' with ''means, for purposes of this part, a plan'' to avoid any confusion with the HIPAA definition. Additionally, we broadened the definition to respond to an expressed need to include stand-alone prescription drug plans, like those offered under the Medicare Part D program.

Other adjudicated actions or decisions means formal or official final actions taken against a health care practitioner, physician, dentist, provider, or supplier by a Federal governmental agency, a State law or fraud enforcement agency, or a health plan; which include the availability of a due process mechanism, and are based on acts or omissions that affect or could affect the payment, provision or delivery of a health care item or service. For example, a formal or official final action taken by a Federal governmental agency, a State law or fraud enforcement agency, or a health plan may include, but is not limited to, personnel-related actions such as suspensions without pay, reductions in pay, reductions in grade for cause, terminations, or other comparable actions. A hallmark of any valid adjudicated action or decision is the availability of a due process mechanism. The fact that the subject elects not to use the due process mechanism provided by the authority bringing the action is immaterial, as long as such a process is available to the subject before the adjudicated action or decision is made final. In general, if an adjudicated action or decision follows an agency's established administrative procedures (which ensure that due process is available to the subject of the final adverse action), it would qualify as a reportable action under this definition. This definition specifically excludes clinical privileging actions taken by Federal government agencies or State law and fraud enforcement agencies and similar paneling decisions made by health plans. This definition does not include overpayment determinations made by Federal or State government programs, their contractors or health plans; and it does not include denial of claims determinations made by Federal government agencies, State law or fraud enforcement agencies, or health plans. For health plans that are not government entities, an action taken following adequate notice and the opportunity for a hearing that meets the standards of due process set out in section 412(b) of the HCQIA (42 U.S.C. 11112(b)) also would qualify as a reportable action under this definition.

The term ''other adjudicated actions or decisions'' is currently defined in HIPDB regulations. To reflect a change in terminology made by section 6403, we modified this definition by replacing the term, ''State government agency'' with ''State law or fraud enforcement agency'' when referring to those State agencies that take ''other adjudicated actions or decisions.''

State law or fraud enforcement agency includes, but is not limited to:

(a) A State law enforcement agency;

(b) A State Medicaid fraud control unit (as defined in section 1903(q) of the Social Security Act); and

(c) A State agency administering (including those providing payment for services) or supervising the administration of a State health care program (as defined in section 1128(h) of the Social Security Act).

Section 6403(b)(3) added the term ''State law or fraud enforcement agency'' in section 1921(g)(2) of the Social Security Act to describe those State agencies (in addition to State licensing or certification agencies) that were formerly required to report final adverse actions under section 1128E and that are now required to report those actions under section 1921. We added ''a State agency administering (including those providing payment for services) a State health care program'' as an example of an agency that would report exclusions from State health care programs. These State agencies also would take certain other adjudicated actions or decisions defined in the regulations, such as ''personnel-related actions,'' when providing health care services through State-owned hospitals and other facilities. Because these agencies have a role in investigating and preventing health care fraud and abuse, they were included in the definition.

State licensing or certification agency includes, but is not limited to, any authority of a State (or of a political subdivision thereof) responsible for the licensing or certification of health care practitioners, physicians, dentists, (or any peer review organization, or private accreditation entity reviewing the services provided by health care practitioners, physicians, or dentists), health care entities, providers, or

suppliers. Examples of such State agencies include Departments of Professional Regulation, Health, Social Services (including State Survey and Certification and Medicaid Single State agencies), Commerce, and Insurance.

Section 6403(b)(3) amended section 1921 by adding the term ''State licensing or certification agency.'' This term, which is defined in section 1921(g)(1) of the Social Security Act, is intended to combine two categories of current NPDB and HIPDB reporters: (1) State agencies responsible for licensing health care practitioners and entities (also referred to in NPDB regulations as ''State licensing and certification authorities''), peer review organizations, and private accreditation entities (all of which currently report to the NPDB under section 1921); and (2) State agencies responsible for the licensing and certification of health care practitioners, providers, and suppliers (which report to the HIPDB under section 1128E). We also clarified the definition by providing examples from the HIPDB regulations of the scope of State agencies that license or certify health care practitioners, physicians, dentists, health care entities, providers, and suppliers.

In addition to the new terms we propose to add in this section, we also propose to slightly amend the definitions of the following existing terms. These amendments are necessary to ensure the maximum appropriate coordination among requirements for the HCQIA, and sections 1921 and 1128E of the Social Security Act.

Board of Medical Examiners, or Board means a body or subdivision of such body which is designated by a State for the purpose of licensing, monitoring, and disciplining physicians or dentists. This term includes a Board of Osteopathic Examiners or its subdivision, a Board of Dentistry or its subdivision, or an equivalent body as determined by the State. Where the Secretary, pursuant to section 423(c)(2), of the HCQIA (42 U.S.C. 11112(c)) has designated an alternate entity to carry out the reporting activities of § 60.12 due to a Board's failure to comply with § 60.8, the term Board of Medical Examiners or ''Board'' refers to this alternate entity.

For this definition, we deleted the reference to ''the Act'' and inserted the complete statutory reference for the HCQIA. This change was necessary to avoid confusion among the different statutes governing NPDB operations.

Health care entity means, for purposes of this part:

(a) A hospital;

(b) An entity that provides health care services, and engages in professional review activity through a formal peer review process for the purpose of furthering quality health care, or a committee of that entity; or

(c) A professional society or a committee or agent thereof, including those at the national, State, or local level, of physicians, dentists, or other health care practitioners that engages in professional review activity through a formal peer review process, for the purpose of furthering quality health care.

For purposes of paragraph (b) of this definition, an entity includes: a health maintenance organization which is licensed by a State or determined to be qualified as such by the Department of Health and Human Services; and any group or prepaid medical or dental practice which meets the criteria of paragraph (b).

To avoid any confusion with the manner that Medicare defines such terms, we replaced the phrase ''health care entity means'' with ''health care entity means, for the purposes of this part.''

Health care practitioner, licensed health care practitioner, licensed practitioner, or practitioner means an individual other than a physician or dentist, who is licensed or otherwise authorized by a State to provide health care services (or any individual who, without authority, holds himself or herself out to be so licensed or authorized).

The current NPDB and HIPDB definitions for the term ''health care practitioner'' have slight differences, although both Data Banks ultimately collect information on the same range of practitioners. First, the NPDB definition excludes physicians and dentists because the HCQIA provides separate definitions for physicians and dentists. Conversely, the HIPDB definition for ''health care practitioner'' includes physicians and dentists. Second, the HIPDB definition includes individuals who, without authority, hold themselves out to be licensed or authorized. While this language regarding individuals who hold themselves out to be licensed or authorized is not explicitly stated in the original NPDB definition of ''health care practitioner,'' it is included in the NPDB definitions for ''physician'' and ''dentist,'' and has been part of NPDB ''health care practitioner'' definition in reporting guidance since the NPDB began operations. A final difference in the two regulatory definitions is that the HIPDB definition also refers to the terms ''licensed health care practitioner,'' ''licensed practitioner,'' and ''practitioner.''

To reconcile these differences in definitional language, while still maintaining the statutory requirements, we made two changes to the NPDB definition. First, we expanded the original NPDB term of ''health care practitioner'' to include the additional terms used in the HIPDB definition (i.e., ''licensed health care practitioner, licensed practitioner, or practitioner''). Second, we included in the definition individuals who, without authority, hold themselves out to be licensed or authorized. Although this proposed definition excludes physicians and dentists (and the original HIPDB definition does not), we refer to ''health care practitioners, physicians, and dentists'' throughout these proposed rules to ensure that the statutory requirements are fulfilled.

Hospital means, for purposes of this part, an entity described in paragraphs (1) and (7) of section 1861(e) of the Social Security Act.

To avoid any confusion with the manner that Medicare defines such terms, we replaced the phrase ''means an entity'' with ''means, for purposes of this part, an entity.''

Negative action or finding by a Federal or State licensing or certification authority, peer review organization, or private accreditation entity means:

(a) A final determination of denial or termination of an accreditation status from a private accreditation entity that indicates a risk to the safety of a patient(s) or quality of health care services;

(b) Any recommendation by a peer review organization to sanction a health care practitioner, physician, or dentist; or

(c) Any negative action or finding that under the State's law is publicly available information and is rendered by a Federal or State licensing or certification authority, including but not limited to, limitations on the scope of practice, liquidations, injunctions, and forfeitures. This definition also includes final adverse actions rendered by a Federal or State licensing or certification authority, such as exclusions, revocations, or suspension of license or certification, that occur in conjunction with settlements in which no finding of liability has been made (although such a settlement itself is not reportable under the statute). This definition excludes administrative fines or citations and corrective action plans and other personnel actions, unless they are:

(1) Connected to the delivery of health care services, or

(2) Taken in conjunction with other adverse licensure or certification actions such as revocation, suspension, censure, reprimand, probation, or surrender.

To date, we have allowed reporting entities to apply their own specific definition of negative action or finding. This provides States and other reporting entities the flexibility to interpret their own statutes and governing policies to meet the reporting requirements of the NPDB and HIPDB. We have also received comments from reporting entities that suggest a need for a more formal definition of negative finding. We welcome comments that address the definition of any negative action or finding, specifically comments that clarify the definition of negative finding.

Both NPDB and the HIPDB regulations defined the term ''negative action or finding.'' The NPDB definition was limited to negative actions or findings by peer review organizations, private accreditation entities, and State authorities that license (including licensure and certification) health care practitioners and entities. The HIPDB definition included negative actions or findings by Federal or State agencies responsible for the licensing or certification of health care practitioners, providers, and suppliers. Our proposed definition incorporates language from the HIPDB definition to ensure that the NPDB will collect the full range of section 1921 and section 1128E reporting requirements for Federal and State licensing and certification authorities.

In addition, we slightly modified language in the original HIPDB definition regarding the reporting of administrative fines or citations, and corrective action plans and other personnel actions, to make it consistent with existing section 1921 language. Under our proposed definition, administrative fines or citations, and corrective action plans and personnel actions, must be reported if they are either (1) related to the delivery of health care services or (2) taken with another reportable action. The ''or'' replaces the ''and'' in the original HIPDB definition. While this change may slightly expand the reporting requirements for certain Federal agencies, we believe it is fully consistent with Congress's efforts to otherwise harmonize Federal and State licensure and certification reporting requirements.

Peer review organization means, for purposes of this part, an organization with the primary purpose of evaluating the quality of patient care practices or services ordered or performed by health care practitioners, physicians, or dentists measured against objective criteria which define acceptable and adequate practice through an evaluation by a sufficient number of health practitioners in such an area to ensure adequate peer review. The organization has due process mechanisms available to health care practitioners, physicians, and dentists. This definition excludes utilization and quality control peer review organizations described in Part B of Title XI of the Social Security Act (referred to as QIOs) and other organizations funded by the Centers for Medicare and Medicaid Services (CMS) to support the QIO program. We slightly modified this definition by changing ''means an organization'' to ''means, for the purposes of this part, an organization'' to avoid confusion with the definition of this term in Section 1152 of the Social Security Act.

Physician means, for purposes of this part, a doctor of medicine or osteopathy legally authorized to practice medicine or surgery by a State (or who, without authority, holds himself or herself out to be so authorized). We slightly modified this definition by changing ''means a doctor'' to ''means, for the purposes of this part, a doctor'' to avoid confusion with the definition of this term used in Section 1861(r) of the Social Security Act.

Private accreditation entity means an entity or organization that:

(a) Evaluates and seeks to improve the quality of health care provided by a health care entity, provider, or supplier;

(b) Measures a health care entity's, provider's, or supplier's performance based on a set of standards and assigns a level of accreditation;

(c) Conducts ongoing assessments and periodic reviews of the quality of health care provided by a health care entity, provider, or supplier; and

(d) Has due process mechanisms available to health care entities, providers, or suppliers.

In the current NPDB regulations, private accreditation entities are limited to those that accredit health care entities. The definition excludes private accreditation entities that accredit health care practitioners. While the term ''entities,'' with respect to subjects of section 1921 reports, is now understood to include providers and suppliers (and the term ''suppliers'' includes individuals as well as organizations), it is still our understanding that accreditation organizations only accredit organizations and business entities, and not individuals. Therefore it is our expectation that, under the limited reporting requirements that apply to accreditation organizations, private accreditation entities would only report organizations and business entities. To the extent that an accreditation organization also accredits sole proprietorships and takes reportable actions against them, we anticipate that these sole proprietorships would be reported to the NPDB as organization, and not as individual, subjects.

Voluntary surrender of license or certification means a surrender made after a notification of investigation or a formal official request by a Federal or State licensing or certification authority for a health care practitioner, physician, dentist, health care entity, provider, or supplier, to surrender the license or certification (including certification agreements or contracts for participation in Federal or State health care programs). The definition also includes those instances where a health care practitioner, physician, dentist, health care entity, provider, or supplier voluntarily surrenders a license or certification (including program participation agreements or contracts) in exchange for a decision by the licensing or certification authority to cease an investigation or similar proceeding, or in return for not conducting an investigation or proceeding, or in lieu of a disciplinary action.

Both the NPDB and the HIPDB regulations included definitions for ''voluntary surrender.'' The HIPDB regulations referred to this term as ''voluntary surrender,'' while the NPDB regulations used the term ''voluntary surrender of license.'' In these proposed rules, we refer to this term as ''voluntary surrender of license or certification'' for two reasons. First, the revised term clarifies the scope of voluntary surrenders to be reported under sections 1921 and 1128E (i.e., Federal and State licensing and certification actions). Second, the change will prevent confusion among organizations that report surrenders of clinical privileges under the HCQIA.

The NPDB and HIPDB regulatory definitions for voluntary surrender were nearly identical with respect to voluntary surrenders of State licensure. However, the HIPDB definition also contained language with respect to surrender of Federal licensure, as well as Federal and State certification (including certification agreements or contracts for participation in Federal or State health care programs). This additional HIPDB language was included in the NPDB definition to ensure that original HIPDB reporting requirements remained unchanged.

In addition to the definitions we have added or clarified, we also propose to eliminate the term ''Act'' from section 60.3. We chose this approach to avoid confusion when referencing the different statutes governing NPDB operations. NPDB regulations currently define ''Act'' as the Health Care Quality Improvement Act of 1986, title IV of Public Law 99–660, as amended. HIPDB regulations define ''Act'' as the Social Security Act. We instead reference each of these statutes (as well as other governing statutes) by name where they appear in the regulations.

We also propose to use the NPDB definition for the term, ''State,'' as it relates to all requirements under the HCQIA and sections 1921 and 1128E. Both NPDB and HIPDB regulations include a definition for ''State,'' however, they differ in that the NPDB definition includes two additional territories (American Samoa and the Northern Mariana Islands) that are not part of the HIPDB definition. While this change to the original HIPDB regulatory definition may slightly modify requirements for certain organizations, this should not be overly burdensome as these territories have reported few, if any, actions in the past. We believe the simplicity of this change outweighs the very slight potential increase in burden based on the addition of these two territories. Furthermore, the NPDB definition of ''State'' is included in statute, while the HIPDB definition is not. Therefore, the Secretary has greater flexibility to conform the definition to that of the NPDB.

Sec. 60.4 How Information Must Be Reported

We propose to amend this section by changing the reference to ''§ 60.11'' to read ''§ 60.12'' and including references to the newly added §§ 60.10, 60.11, 60.13, 60.14, 60.15, and 60.16. We also remove the reference to reporting to the Board of Medical Examiners.

Sec. 60.5 When Information Must Be Reported

We propose to amend this section of the existing NPDB regulations by:

a. Revising the introductory text of this section to include references to the newly added §§ 60.10, 60.13, 60.14, 60.15, and 60.16 and redesignated §§ 60.11 and 60.12;

b. Adding the August 21, 1996 legacy reporting date for section 1128E actions; and

c. Removing paragraphs (a)–(d) and replacing them with a list of reportable actions. This list reflects the combination of reporting categories from the NPDB and the HIPDB regulations.

The proposed rule brings the HIPDB reporting time frame in line with the NPDB and eliminates references from the current HIPDB regulation to reporting by the close of an entity's next monthly reporting cycle. The proposed rule also eliminates from the current NPDB regulation the requirement for reporting within a 15-day window for those entities that have a dual obligation to report to a State authority. Thus all reports must be made within 30-calendar days from the date the final adverse action was taken. This rule also clarifies the State reporting obligations for persons or entities responsible for submitting malpractice payments (§ 60.7), negative actions or findings (§ 60.11), and adverse actions (§ 60.12). Reports for these three categories are submitted directly to the NPDB and a copy of the report must be mailed to the appropriate State licensing or certification agency. This has been the operational practice of the NPDB since 1990 and fulfills the statutory State reporting obligation for these reporters.

Sec. 60.6 Reporting Errors, Omissions, Revisions or Whether an Action Is on Appeal

We propose to amend this section by:

a. Revising the title to include reporting of whether an action is on appeal. This information currently must be reported for final adverse actions specified in HIPDB regulations;

b. Revising the first and last sentences in paragraph (b) to include the requirement to report revisions to actions for all licensure and certification actions, criminal convictions, civil judgments, exclusions, and other adjudicated actions or decisions. The HIPDB regulations require reporting of revisions to these actions;

c. Revising the third sentence of paragraph (b) to include the requirement to report when an action is on appeal for licensure and certification actions, criminal convictions, civil judgments, exclusions, and other adjudicated actions; and

d. Adding a new sentence at the end of paragraph (a) and new paragraphs (c) and (d) to clarify current data bank policy regarding notifying subjects of a report and the steps subjects may take to ensure the information reported is accurate. These clarifications generally are included in HIPDB regulations, but the same policy has applied to the NPDB as well.

Sec. 60.7 Reporting Medical Malpractice Payments

(We propose no changes to this section.)

Sec. 60.8 Reporting Licensure Actions Taken by Boards of Medical Examiners

We propose to amend this section by revising the reference to ''§ 60.11'' in the last sentence of paragraph (c) to read ''§ 60.12.'' This change reflects the fact that § 60.11 was redesignated as § 60.12 in these proposed rules. We are also adding ''Individual Tax Identification Number (ITIN)'' to § 60.8(b)(4) after the word Social Security Number.

Sec. 60.9 Reporting Licensure and Certification Actions Taken by States

We propose to amend § 60.9 to reflect the changes made by section 6403 to the section 1921 licensure action reporting requirements by State agencies. The title of this section was revised to include licensure and certification actions, as required under section 6403(b)(1)(A)(i). The term ''certification'' has two distinct meanings in the current NPDB and HIPDB regulations. First, in both sets of regulations, ''certification'' is related to licensure. Licensure includes certification and other forms of authorization to provide health care services, and, based on their individual laws and requirements, States may ''license,'' ''certify,'' or ''register'' certain types of health care practitioners, health care entities, providers, or suppliers. For example, States may certify nurse's aides. Second, in section 1128E and the HIPDB regulations, the term ''certification'' is also used to refer to certification of a health care practitioner, provider, or supplier to participate in a Federal or State health care program. In this context, certification includes certification agreements and contracts for participation in a government health care program. State certification actions such as termination of a hospital's Medicaid participating provider agreement or contract are now being reported to the NPDB under this part.

We also propose to modify paragraphs (a) and (b) to reflect the range of subjects reported under this section to include health care practitioners, physicians, dentists, health care entities, providers, and suppliers. In addition, we propose to amend paragraphs (a)(1) through (a)(4) to reflect changes to those reporting requirements made by section 6403(b)(1)(A), which intended to harmonize State licensure and certification action reporting requirements with Federal licensure and certification action reporting

requirements under section 1128E. To reflect the fact that section 6403 transfers State licensure and certification action reporting requirements from section 1128E to section 1921, we propose the following changes to ensure that the original reporting requirements from the HIPDB regulations remain unchanged. First, we amended language in paragraphs (a)(1) through (4) to clarify the range of reportable licensure and certification actions with respect to a license, certification agreement, or contract for participation in State health care programs. Second, in paragraph (c)(4)(ii), which was previously a reserved field, we added a data element for the date of any appeal. Third, we added paragraph (e) to incorporate the sanctions for failure to report that were included in the HIPDB regulations for State licensure and certification actions. Finally, we are also adding ''Individual Tax Identification Number (ITIN)'' to § 60.9(b)(1)(ii) after the word Social Security Number.

Sec. 60.10 Reporting Licensure and Certification Actions Taken by Federal Agencies

We propose to redesignate § 60.10 as § 60.11, and add a new § 60.10 to implement the reporting requirements for Federal licensure and certification agencies. These agencies must report to the NPDB the following final adverse actions that are taken against a health care practitioner, physician, dentist, provider, or supplier (regardless of whether the final adverse action is the subject of a pending appeal):

(a) Formal or official actions, such as revocation or suspension of a license or certification agreement or contract for participation in Federal health care programs (and the length of any such suspension), reprimand, censure, or probation;

(b) Any dismissal or closure of the proceedings by reason of the health care practitioner, physician, dentist, provider, or supplier surrendering their license or certification agreement or contract for participation in Federal health care programs, or leaving the State or jurisdiction;

(c) Any other loss of the license or loss of the certification agreement or contract for participation in a Federal health care program, or the right to apply for, or renew, a license or certification agreement or contract of the health care practitioner, physician, dentist, provider, or supplier, whether by operation of law, voluntary surrender, nonrenewal (excluding nonrenewals due to nonpayment of fees, retirement, or change to inactive status), or otherwise; and

(d) Any other negative action or finding by such Federal agency that is publicly available information.

Further, we are substituting the acronym ''ITIN'' in place of the word ''Individual Tax Identification Number'' in § 60.10(b)(1)(ii).

Sec. 60.11 Reporting Negative Actions or Findings Taken by Peer Review Organizations or Private Accreditation Entities [Redesignated]

We propose to redesignate § 60.11 as § 60.12 and add redesignated § 60.10 as § 60.11. In accordance with the changes to the scope of ''entity'' report subjects required by section 6403, we propose to amend paragraph (a) of this section to include the reporting of health care practitioners, physicians, dentists, health care entities, providers, and suppliers. While peer review organizations will continue to report negative actions or findings taken against health care practitioners, physicians, or dentists, private accreditation entities are required to report actions taken against health care entities, providers, or suppliers. Paragraph (a) is revised to reflect that the reporting entity, (i.e., peer review organization or private accreditation entity) not the State, must submit reports directly to the NPDB and then provide a copy of the report to the appropriate State licensing or certification authority by mail. The remaining paragraphs (b)—(d) are accordingly modified to reflect this reporting scheme.

Sec. 60.12 Reporting Adverse Actions Taken Against Clinical Privileges. [Redesignated]

We propose to redesignate § 60.12 as § 60.17 and add redesignated § 60.11 as § 60.12. As done with § 60.11, the reporting scheme under paragraph (a) is revised to reflect that health care entities send reports directly to the NPDB and provide a copy of the report to the State Board of Medical Examiners.

Further, we propose to slightly modify the heading of § 60.12(a) to read ''Reporting by Health Care Entities to the NPDB.''

Sec. 60.13 Reporting Federal or State Criminal Convictions Related to the Delivery of a Health Care Item or Service

We propose to redesignate § 60.13 as § 60.18, and add a new § 60.13 to implement the requirements of section 6403. Under this provision, Federal and State prosecutors are required to report criminal convictions against health care practitioners, physicians, dentists, providers, or suppliers related to the delivery of a health care item or service (regardless of whether the conviction is the subject of a pending appeal).

Sec. 60.14 Reporting Civil Judgments Related to the Delivery of a Health Care Item or Service

We propose to redesignate § 60.14 as § 60.19, and add a new § 60.14 to implement the requirements of section 6403. Under this provision Federal and State attorneys and health plans must report civil judgments against health care practitioners, physicians, dentists, providers, or suppliers related to the delivery of a health care item or service (regardless of whether the civil judgment is the subject of a pending appeal).

Sec. 60.15 Reporting Exclusions From Participation in Federal or State Health Care Programs

We propose to redesignate § 60.15 as § 60.20, and add a new § 60.15 to implement the requirements of section 6403. Under this provision, Federal government agencies and State law and fraud enforcement agencies must report health care practitioners, physicians, dentists, providers, and suppliers excluded from participating in Federal or State health care programs, including exclusions resulting from a settlement that is not reported because no findings or admissions of liability have been made (regardless of whether the exclusion is the subject of a pending appeal).

Sec. 60.16 Reporting Other Adjudicated Actions or Decisions

We propose to redesignate § 60.16 as § 60.21, and add a new § 60.16 to implement the requirements of section 6403. Under this provision, Federal government agencies, State law and fraud enforcement agencies, and health plans must report other adjudicated actions or decisions as defined in § 60.3 related to the delivery, payment or provision of a health care item or service against health care practitioners, physicians, dentists, providers, and suppliers (regardless of whether the other adjudicated action or decision is subject to a pending appeal).

Sec. 60.17 Information Which Hospitals Must Request From the National Practitioner Data Bank [Redesignated]

As previously noted, we propose redesignating § 60.12 as § 60.17.

Sec. 60.18 Requesting Information From the National Practitioner Data Bank [Redesignated]

We propose to redesignate § 60.13 as § 60.18. We propose to amend § 60.18, paragraph (a) of the existing NPDB regulations to clarify to whom information under the HCQIA as well as the amended sections 1921 and 1128E components of the NPDB would be made available by:

a. Redesignating § 60.13 as § 60.18 to implement the requirements of section 6403;

b. Revising the reference to ''§ 60.11'' in paragraph (a)(1) to read ''§ 60.12;''

c. Revising the reference to ''§ 60.12'' in paragraph (a)(1)(v) to read ''§ 60.17;''

d. Adding the references to include §§ 60.10, 60.11, 60.13, 60.14, 60.15, and 60.16 in paragraph (a)(2);

e. Revising paragraph (a)(2)(i) to include the following language in parentheses after the word administering: ''including those providing payment for services;''

f. Replacing the text in paragraphs (a)(2), (ii), (iv), (v), (vi), and (vii) to reflect the revised list of entities which may receive information reported under §§ 60.9, 60.10, 60.11, 60.13, 60.14, 60.15 and 60.16; and

g. Inserting paragraph (a)(2)(viii).

Based on section 6403 amendments, State licensing or certification agencies and Federal agencies responsible for the licensing and certification of health care practitioners, physicians, dentists, providers and suppliers are authorized to query the NPDB under section 1921 and 1128E. We understand the statutory language to limit query access to those State licensing and certification agencies that license or certify health care practitioners, physicians, dentists, entities, providers, or suppliers. These agencies would include only authorities of the State responsible for licensure or certification and would exclude peer review organizations and private accreditation entities. Such an interpretation of the statutory language is consistent with the goal of maintaining existing NPDB and HIPDB reporting and querying requirements to the greatest extent possible.

Consistent with section 6403 language, hospitals and other health care entities, professional societies, and QIOs will have access to section 1921 information reported in §§ 60.9 and 60.11, and section 1128E information reported in §§ 60.10, 60.13, 60.14, 60.15, and 60.16. Access to the section 1921 information for these groups was not affected by the passage of section 6403. Section 6403 expands the access that these groups have with respect to Federal information under section 1128E.

Sec. 60.19 Fees Applicable to Requests for Information [Redesignated]

We propose to amend redesignated § 60.19(a) to reflect, based on section 6403 amendments, the full range of subjects that will be sent a copy of a report submitted about them.

Sec. 60.20 Confidentiality of National Practitioner Data Bank information [Redesignated]

We propose to slightly amend redesignated § 60.20 so that it reflects the limitations on disclosure provisions based on current NPDB and HIPDB regulatory language. These confidentiality requirements would apply to all information obtained from the NPDB.

Sec. 60.21 How To Dispute the Accuracy of National Practitioner Data Bank Information [Redesignated]

The dispute process for the NPDB and the HIPDB is identical, however, HIPDB regulations currently provide a more detailed account of the process than do the NPDB regulations. Therefore, we are proposing to amend this section to include the HIPDB regulatory provisions for disputing the accuracy of data bank information.

Sec. 60.22 Immunity

Section 6403 added a provision to section 1921 that provides reporters of NPDB information immunity from liability in a civil action filed by the subject of a report, unless the individual, entity, or authorized agent submitting the report has actual knowledge of the falsity of the information contained in the report. HIPDB regulations also contain a similar immunity provision. We propose to add this provision, which will apply to all individuals who, and entities and authorized agents that, report information to the NPDB.

III. Implementation Schedule

Reporting requirements have been established through Title IV of the Health Care Quality Improvement Act of 1986, Section 1921 of the Social Security Act, as amended by the Omnibus Budget Reconciliation Act of 1990, and Section 1128E of the Social Security Act as added by Section 221(a) of the Health Insurance Portability and Accountability Act of 1996, and through their respective regulatory procedures. As a result, most reporters and queriers have submitted information to and received information from the NPDB and the HIPDB since 1996. A few reporters, accreditation organizations, and peer review organizations, have submitted information to the NPDB since 2010.

As a result of Section 6403 of the Patient Protection and Affordable Care Act of 2010, the HIPDB will cease to function. Data contained in the HIPDB will be transferred to the NPDB, along with the reporting and querying functions. Therefore, we will announce through the issuance of notice(s) in the **Federal Register** when the merged system will be open for reporting and querying. Further, the announcement will identify when and how information will be available from the NPDB. A revised reporting form will be used to accommodate system integration functions when this form is approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995.

IV. Regulatory Impact Statement

A. Regulatory Analysis

This proposed rule is technical in nature. It involves transferring data reporting requirements under 45 CFR part 61 for the Healthcare Integrity and Protection Data Bank (HIPDB) to 45 CFR part 60 for the National Practitioner Data Bank (NPDB), another data bank receiving like reports. The result of this transfer does not increase the regulatory burden on affected entities; it alleviates duplication.

1. Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require HRSA to analyze options for regulatory relief of small businesses. For purposes of the

RFA, small entities include small businesses, nonprofit organizations, and government agencies. Further, in accordance with the RFA, if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of the rule on small entities and analyze regulatory options that could lessen the impact of the rule. The purpose of the proposed rule is to eliminate duplication between the HIPDB and the NPDB. The NPDB will serve as the sole repository for all information previously captured in the HIPDB. This will not substantially alter reporting requirements. Therefore the Secretary certifies that these regulations will not have a significant impact on a substantial number of small entities.

3. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires agencies to assess anticipated costs and benefits for any rulemaking that may result in an annual expenditure of $136 million or more by State, local, or tribal governments, or the private sector. HRSA has determined that this rule does not impose any additional mandates on State, local, or tribal governments, or the private sector, that will result in an annual expenditure of $136 million or more. A full analysis under the UMRA is not necessary.

4. Executive Order 13132—Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule imposing substantial direct requirements or costs on State and local governments, preempts State law, or otherwise has Federalism implications. In reviewing this proposed rule under the threshold criteria of Executive Order 13132, the Secretary has determined that this rule will not significantly affect the rights, roles, and responsibilities of State or local governments because the actions that are already reported under HIPDB are merely shifting to the NPDB.

B. Paperwork Reduction Act

This proposed rule does not add any new reporter categories, but information-collection requirements may be expanded for some reporters. For instance, the proposed rule interprets statutory references to ''entity'' reporting subjects under the amended section 1921 to include ''health care providers and suppliers.'' As a result, accreditation entities will now be required to report actions taken against providers and suppliers in addition to those subjects that meet the definition of a ''health care entity.'' However, these sorts of expansions are subtle and will not significantly alter the current requirements under the HIPDB and NPDB regulations. The NPDB and HIPDB regulations contain information collection requirements that have been approved by OMB under the Paperwork Reduction Act of 1995 (PRA) and assigned control numbers 0915–0126 and 0915–0239, respectively.

The only impact of the merging of 45 CFR Part 61 with 45 CFR Part 60 is to eliminate duplication and streamline internal operations. By combining two data banks into a single data bank, the need to capture like information in two data bases is eliminated.

Dated: January 11, 2012.

Mary K. Wakefield,

Administrator, Health Resources and Services Administration.

Approved: February 3, 2012.

Kathleen Sebelius,

Secretary.

List of Subjects

45 CFR Part 60

Claims, Fraud, Health, Health maintenance organizations (HMOs), Health professions, Hospitals, Insurance companies, Malpractice, Reporting and recordkeeping requirements.

45 CFR Part 61

Billing and transportation services, Durable medical equipment suppliers and manufacturers, Health care insurers, Health maintenance organizations (HMOs), Health professions, Home health care agencies, Hospitals, Pharmaceutical suppliers and manufacturers, Reporting and recordkeeping requirements, Skilled nursing facilities.

For the reasons set forth in the preamble, HHS proposes to revise 45 CFR parts 60 and 61 as follows:

PART 60—NATIONAL PRACTITIONER DATA BANK

1. The authority citation for 45 CFR part 60 is revised to read as follows:

Authority: 42 U.S.C. 11101–11152; 42 U.S.C. 1396r–2.

2. The Table of Contents for part 60 is revised to read as follows:

Subpart A—General Provisions

Sec.
60.1 The National Practitioner Data Bank.
60.2 Applicability of these regulations.
60.3 Definitions.

Subpart B—Reporting of Information

Sec.
60.4 How information must be reported.
60.5 When information must be reported.
60.6 Reporting errors, omissions, and revisions.
60.7 Reporting medical malpractice payments.
60.8 Reporting licensure actions taken by boards of medical examiners.
60.9 Reporting licensure and certification actions taken by States.
60.10 Reporting licensure and certification actions taken by Federal agencies.
60.11 Reporting negative actions or findings taken by peer review organizations or private accreditation entities.
60.12 Reporting adverse actions taken against clinical privileges.
60.13 Reporting Federal or State criminal convictions related to the delivery of a health care item or service.
60.14 Reporting civil judgments related to the delivery of a health care item or service.
60.15 Reporting exclusions from participation in Federal or State health care programs.
60.16 Reporting other adjudicated actions or decisions.

Subpart C—Disclosure of Information by the National Practitioner Data Bank

Sec.
60.17 Information which hospitals must request from the National Practitioner Data Bank.
60.18 Requesting information from the National Practitioner Data Bank.
60.19 Fees applicable to requests for information.
60.20 Confidentiality of National Practitioner Data Bank information.
60.21 How to dispute the accuracy of National Practitioner Data Bank information.
60.22 Immunity.

3. Revise part 60 to read as follows:

Subpart A—General Provisions

§ 60.1 The National Practitioner Data Bank

The Health Care Quality Improvement Act of 1986 (HCQIA), as amended, title IV of Public Law 99–660 (42 U.S.C. 11101 *et seq.*) (hereinafter referred to as ''title IV''), authorizes the Secretary to establish (either directly or by contract) a National Practitioner Data Bank (NPDB) to collect and release certain information relating to the professional competence and conduct of physicians, dentists and other health care practitioners. Section 1921 of the Social Security Act (hereinafter referred to as ''section 1921''), as amended, (42 U.S.C. 1396r–2) expanded the requirements under the NPDB and requires each State to adopt a system of reporting to the Secretary adverse licensure or certification actions taken against health care practitioners, physicians, dentists, health care entities, providers, and suppliers, as well as certain final adverse actions taken by State law and

fraud enforcement agencies against health care practitioners, physicians, dentists, providers, and suppliers. Section 1128E of the Social Security Act (hereinafter referred to as ''section 1128E''), as amended, (42 U.S.C. 1320a–7e) authorizes the Secretary to implement a national healthcare fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken by Federal government agencies and health plans against health care practitioners, physicians, dentists, providers, and suppliers. Information from section 1921 and section 1128E is to be reported and distributed through the NPDB. The regulations in this part set forth the reporting and disclosure requirements for the NPDB, as well as procedures to dispute the accuracy of information contained in the NPDB.

§ 60.2 Applicability of these regulations.

The regulations in this part establish reporting requirements applicable to hospitals, health care entities, Boards of Medical Examiners, professional societies of physicians, dentists, or other health care practitioners which take adverse licensure or professional review actions; State licensing or certification authorities, peer review organizations, and private accreditation entities that take licensure or certification actions or negative actions or findings against health care practitioners, physicians, dentists, health care entities, providers, or suppliers; entities (including insurance companies) making payments as a result of medical malpractice actions or claims; Federal government agencies, State law and fraud enforcement agencies and health plans that take final adverse actions against health care practitioners, physicians, dentists, providers, and suppliers. They also establish procedures to enable individuals or entities to obtain information from the NPDB or to dispute the accuracy of NPDB information.

§ 60.3 Definitions.

Adversely affecting means reducing, restricting, suspending, revoking, or denying clinical privileges or membership in a health care entity.

Affiliated or associated refers to health care entities with which a subject of a final adverse action has a business or professional relationship. This includes, but is not limited to, organizations, associations, corporations, or partnerships. This also includes a professional corporation or other business entity composed of a single individual.

Board of Medical Examiners, or Board, means a body or subdivision of such body which is designated by a State for the purpose of licensing, monitoring, and disciplining physicians or dentists. This term includes a Board of Osteopathic Examiners or its subdivision, a Board of Dentistry or its subdivision, or an equivalent body as determined by the State. Where the Secretary, pursuant to section 423(c)(2) of the HCQIA (42 U.S.C. 11112(c)), has designated an alternate entity to carry out the reporting activities of § 60.12 due to a Board's failure to comply with § 60.8, the term Board of Medical Examiners or Board refers to this alternate entity.

Civil judgment means a court-ordered action rendered in a Federal or State court proceeding, other than a criminal proceeding. This reporting requirement does not include Consent Judgments that have been agreed upon and entered to provide security for civil settlements in which there was no finding or admission of liability.

Clinical privileges means the authorization by a health care entity to a physician, dentist or other health care practitioner for the provision of health care services, including privileges and membership on the medical staff.

Criminal conviction means a conviction as described in section 1128(i) of the Social Security Act.

Dentist means a doctor of dental surgery, doctor of dental medicine, or the equivalent who is legally authorized to practice dentistry by a State (or who, without authority, holds himself or herself out to be so authorized).

Exclusion means a temporary or permanent debarment of an individual or entity from participation in any Federal or State health-related program, in accordance with which items or services furnished by such person or entity will not be reimbursed under any Federal or State health-related program.

Federal government agency includes, but is not limited to:

(a) The U.S. Department of Justice;

(b) The U.S. Department of Health and Human Services;

(c) Federal law enforcement agencies, including law enforcement investigators;

(d) Any other Federal agency that either administers or provides payment for the delivery of health care services, including, but not limited to the U.S. Department of Defense and the U.S. Department of Veterans Affairs; and

(e) Federal agencies responsible for the licensing and certification of health care practitioners, physicians, dentists, providers, and suppliers.

Formal peer review process means the conduct of professional review activities through formally adopted written procedures which provide for adequate notice and an opportunity for a hearing.

Formal proceeding means a proceeding held before a State licensing or certification authority, peer review organization, or private accreditation entity that maintains defined rules, policies, or procedures for such a proceeding.

Health care entity means, for purposes of this part:

(a) A hospital;

(b) An entity that provides health care services, and engages in professional review activity through a formal peer review process for the purpose of furthering quality health care, or a committee of that entity; or

(c) A professional society or a committee or agent thereof, including those at the national, State, or local level, of physicians, dentists, or other health care practitioners that engages in professional review activity through a formal peer review process, for the purpose of furthering quality health care.

For purposes of paragraph (b) of this definition, an entity includes: a health maintenance organization which is licensed by a State or determined to be qualified as such by the Department of Health and Human Services; and any group or prepaid medical or dental practice which meets the criteria of paragraph (b).

Health care practitioner, licensed health care practitioner, licensed practitioner, or practitioner means an individual other than a physician or dentist, who is licensed or otherwise authorized by a State to provide health care services (or any individual who, without authority, holds himself or herself out to be so licensed or authorized).

Health care provider means, for purposes of this part, a provider of services as defined in section 1861(u) of the Social Security Act; any organization (including a health maintenance organization, preferred provider organization or group medical practice) that provides health care services and follows a formal peer review process for the purpose of furthering quality health care, and any other organization that, directly or through contracts, provides health care services.

Health care supplier means, for purposes of this part, a provider of medical and other health care services as described in section 1861(s) of the Social Security Act; or any individual or entity, other than a provider, who

furnishes, whether directly or indirectly, or provides access to, health care services, supplies, items, or ancillary services (including, but not limited to, durable medical equipment suppliers, manufacturers of health care items, pharmaceutical suppliers and manufacturers, health record services [such as medical, dental, and patient records], health data suppliers, and billing and transportation service suppliers). The term also includes any individual or entity under contract to provide such supplies, items, or ancillary services; health plans as defined in this section (including employers that are self-insured); and health insurance producers (including but not limited to agents, brokers, solicitors, consultants, and reinsurance intermediaries).

Health plan means, for purposes of this part, a plan, program or organization that provides health benefits, whether directly, through insurance, reimbursement or otherwise, and includes but is not limited to:

(a) A policy of health insurance;

(b) A contract of a service benefit organization;

(c) A membership agreement with a health maintenance organization or other prepaid health plan;

(d) A plan, program, agreement, or other mechanism established, maintained, or made available by a self-insured employer or group of self-insured employers, a health care practitioner, physician, dentist, provider, or supplier group, third-party administrator, integrated health care delivery system, employee welfare association, public service group or organization or professional association;

(e) An insurance company, insurance service or insurance organization that is licensed to engage in the business of selling health care insurance in a State and which is subject to State law which regulates health insurance; and

(f) An organization that provides benefit plans whose coverage is limited to outpatient prescription drugs.

Hospital means, for purposes of this part, an entity described in paragraphs (1) and (7) of section 1861(e) of the Social Security Act.

Medical malpractice action or claim means a written complaint or claim demanding payment based on a physician's, dentist's, or other health care practitioner's provision of or failure to provide health care services, and includes the filing of a cause of action based on the law of tort, brought in any State or Federal Court or other adjudicative body.

Negative action or finding by a Federal or State licensing or certification authority, peer review organization, or private accreditation entity means:

(a) A final determination of denial or termination of an accreditation status from a private accreditation entity that indicates a risk to the safety of a patient(s) or quality of health care services;

(b) Any recommendation by a peer review organization to sanction a health care practitioner, physician, or dentist; or

(c) Any negative action or finding that, under the State's law, is publicly available information and is rendered by a licensing or certification authority, including but not limited to, limitations on the scope of practice, liquidations, injunctions, and forfeitures. This definition also includes final adverse actions rendered by a Federal or State licensing or certification authority, such as exclusions, revocations, or suspension of license or certification, that occur in conjunction with settlements in which no finding of liability has been made (although such a settlement itself is not reportable under the statute). This definition excludes administrative fines or citations and corrective action plans and other personnel actions, unless they are:

(1) Connected to the delivery of health care services, or

(2) Taken in conjunction with other adverse licensure or certification actions such as revocation, suspension, censure, reprimand, probation, or surrender.

Organization name means the subject's business or employer at the time the underlying acts occurred. If more than one business or employer is applicable, the one most closely related to the underlying acts should be reported as the ''organization name,'' with the others being reported as ''affiliated or associated health care entities.''

Organization type means a description of the nature of that business or employer.

Other adjudicated actions or decisions means formal or official final actions taken against a health care practitioner, physician, dentist, provider, or supplier by a Federal governmental agency, a State law or fraud enforcement agency, or a health plan; which include the availability of a due process mechanism, and are based on acts or omissions that affect or could affect the payment, provision, or delivery of a health care item or service. For example, a formal or official final action taken by a Federal governmental agency, a State law or fraud enforcement agency, or a health plan may include, but is not limited to, a personnel-related action such as suspensions without pay, reductions in pay, reductions in grade for cause, terminations, or other comparable actions. A hallmark of any valid adjudicated action or decision is the availability of a due process mechanism. The fact that the subject elects not to use the due process mechanism provided by the authority bringing the action is immaterial, as long as such a process is available to the subject before the adjudicated action or decision is made final. In general, if an ''adjudicated action or decision'' follows an agency's established administrative procedures (which ensure that due process is available to the subject of the final adverse action), it would qualify as a reportable action under this definition. This definition specifically excludes clinical privileging actions taken by Federal government agencies or State law and fraud enforcement agencies and similar paneling decisions made by health plans. This definition does not include overpayment determinations made by Federal or State government programs, their contractors or health plans; and it does not include denial of claims determinations made by Federal government agencies, State law or fraud enforcement agencies, or health plans. For health plans that are not Government entities, an action taken following adequate notice and the opportunity for a hearing that meets the standards of due process set out in section 412(b) of the HCQIA (42 U.S.C. 11112(b)) also would qualify as a reportable action under this definition.

Peer review organization means, for purposes of this part, an organization with the primary purpose of evaluating the quality of patient care practices or services ordered or performed by health care practitioners, physicians, or dentists measured against objective criteria which define acceptable and adequate practice through an evaluation by a sufficient number of health practitioners in such an area to ensure adequate peer review. The organization has due process mechanisms available to health care practitioners, physicians, and dentists. This definition excludes utilization and quality control peer review organizations described in Part B of Title XI of the Social Security Act (referred to as QIOs) and other organizations funded by the Centers for Medicare and Medicaid Services (CMS) to support the QIO program.

Physician means, for purposes of this part, a doctor of medicine or osteopathy legally authorized to practice medicine or surgery by a State (or who, without authority, holds himself or herself out to be so authorized).

Private accreditation entity means an entity or organization that:

(a) Evaluates and seeks to improve the quality of health care provided by a health care entity, provider, or supplier;

(b) Measures a health care entity's, provider's, or supplier's performance based on a set of standards and assigns a level of accreditation;

(c) Conducts ongoing assessments and periodic reviews of the quality of health care provided by a health care entity, provider, or supplier; and

(d) Has due process mechanisms available to health care entities, providers, or suppliers.

Professional review action means an action or recommendation of a health care entity:

(a) Taken in the course of professional review activity;

(b) Based on the professional competence or professional conduct of an individual physician, dentist, or other health care practitioner which affects or could affect adversely the health or welfare of a patient or patients; and

(c) Which adversely affects or may adversely affect the clinical privileges or membership in a professional society of the physician, dentist, or other health care practitioner.

(d) This term excludes actions which are primarily based on:

(1) The physician's, dentist's, or other health care practitioner's association, or lack of association, with a professional society or association;

(2) The physician's, dentist's, or other health care practitioner's fees or the physician's, dentist's, or other health care practitioner's advertising or engaging in other competitive acts intended to solicit or retain business;

(3) The physician's, dentist's, or other health care practitioner's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis;

(4) A physician's, dentist's, or other health care practitioner's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional; or

(5) Any other matter that does not relate to the competence or professional conduct of a physician, dentist, or other health care practitioner.

Professional review activity means an activity of a health care entity with respect to an individual physician, dentist, or other health care practitioner:

(a) To determine whether the physician, dentist, or other health care practitioner may have clinical privileges with respect to, or membership in, the entity;

(b) To determine the scope or conditions of such privileges or membership; or

(c) To change or modify such privileges or membership.

Quality Improvement Organization means a utilization and quality control peer review organization (as defined in part B of title XI of the Social Security Act) that:

(a)(1) Is composed of a substantial number of the licensed doctors of medicine and osteopathy engaged in the practice of medicine or surgery in the area and who are representative of the practicing physicians in the area, designated by the Secretary under section 1153, with respect to which the entity shall perform services under this part, or

(2) Has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in such area to assure that adequate peer review of the services provided by the various medical specialties and subspecialties can be assured;

(b) Is able, in the judgment of the Secretary, to perform review functions required under section 1154 in a manner consistent with the efficient and effective administration of this part and to perform reviews of the pattern of quality of care in an area of medical practice where actual performance is measured against objective criteria which define acceptable and adequate practice; and

(c) Has at least one individual who is a representative of consumers on its governing body.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

State means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

State law or fraud enforcement agency includes, but is not limited to:

(a) a State law enforcement agency;

(b) a State Medicaid fraud control unit (as defined in section 1903(q) of the Social Security Act); and

(c) a State agency administering (including those providing payment for services) or supervising the administration of a State health care program (as defined in section 1128(h) of the Social Security Act).

State licensing or certification agency includes, but is not limited to, any authority of a State (or of a political subdivision thereof) responsible for the licensing or certification of health care practitioners, physicians, dentists (or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners, physicians, or dentists), health care entities, providers, or suppliers. Examples of such State agencies include Departments of Professional Regulation, Health, Social Services (including State Survey and Certification and Medicaid Single State agencies), Commerce, and Insurance.

Voluntary surrender of license or certification means a surrender made after a notification of investigation or a formal official request by a Federal or State licensing or certification authority for a health care practitioner, physician, dentist, health care entity, provider, or supplier to surrender the license or certification (including certification agreements or contracts for participation in Federal or State health care programs). The definition also includes those instances where a health care practitioner, physician, dentist, health care entity, provider, or supplier voluntarily surrenders a license or certification (including program participation agreements or contracts) in exchange for a decision by the licensing or certification authority to cease an investigation or similar proceeding, or in return for not conducting an investigation or proceeding, or in lieu of a disciplinary action.

Subpart B—Reporting of Information

§ 60.4 How information must be reported.

Information must be reported to the NPDB as required under §§ 60.7, 60.8, 60.9, 60.10, 60.11, 60.12, 60.13, 60.14, 60.15 and 60.16 in such form and manner as the Secretary may prescribe.

§ 60.5 When information must be reported.

Information required under §§ 60.7, 60.8, and 60.12 must be submitted to the NPDB within 30 days following the action to be reported, beginning with actions occurring on or after September 1, 1990; information required under § 60.11 must be submitted to the NPDB within 30 days following the action to be reported, beginning with actions occurring on or after January 1, 1992; and information required under §§ 60.9, 60.10, 60.13, 60.14, 60.15, and 60.16 must be submitted to the NPDB within 30 days following the action to be reported, beginning with actions occurring on or after August 21, 1996.

Following is the list of reportable actions:

(a) Malpractice payments (§ 60.7);

(b) Licensure and certification actions (§§ 60.8, 60.9, and 60.10);

(c) Negative actions or findings (§ 60.11);

(d) Adverse actions (§ 60.12);

(e) Health Care-related Criminal Convictions (§ 60.13);

(f) Health Care-related Civil Judgments (§ 60.14);

(g) Exclusions from Federal or State health care programs (§ 60.15); and

(h) Other adjudicated actions of decisions (§ 60.16).

Persons or entities responsible for submitting reports of malpractice payments (§ 60.7), negative actions or findings (§ 60.11), or adverse actions (§ 60.12) must additionally provide to their respective State authorities a copy of the report they submit to the NPDB.

§ 60.6 Reporting errors, omissions, revisions or whether an action is on appeal.

(a) Persons and entities are responsible for the accuracy of information which they report to the NPDB. If errors or omissions are found after information has been reported, the person or entity which reported it must send an addition or correction to the NPDB and in the case of reports made under § 60.12, also to the Board of Medical Examiners, as soon as possible. The NPDB will not accept requests for readjudication of the case by the NPDB, and will not examine the underlying merits of a reportable action.

(b) An individual or entity which reports information on licensure or certification, negative actions or findings, clinical privileges, criminal convictions, civil or administrative judgments, exclusions, or adjudicated actions or decisions under §§ 60.8, 60.9, 60.10, 60.11, 60.12, 60.13, 60.14, 60.15, or 60.16 must also report any revision of the action originally reported. Revisions include, but are not limited to, reversal of a professional review action or reinstatement of a license. In the case of actions reported under §§ 60.9, 60.10, 60.13, 60.14, 60.15 or 60.16, revisions also include whether an action is on appeal. Revisions are subject to the same time constraints and procedures of §§ 60.5, 60.8, 60.9, 60.10, 60.11, 60.12, 60.13, 60.14, 60.15, or 60.16 as applicable to the original action which was reported.

(c) The subject will be sent a copy of all reports, including revisions and corrections to the report.

(d) Upon receipt of a report, the subject:

(1) Can accept the report as written;

(2) May provide a statement to the NPDB that will be permanently appended to the report, either directly or through a designated representative; (The NPDB will distribute the statement to queriers, where identifiable, and to the reporting entity and the subject of the report. Only the subject can, upon request, make changes to the statement. The NPDB will not edit the statement; however the NPDB reserves the right to redact personal indentifying and offensive language that does not change the factual nature of the statement.) or

(3) May follow the dispute process in accordance with § 60.21.

§ 60.7 Reporting medical malpractice payments.

(a) Who must report. Each entity, including an insurance company, which makes a payment under an insurance policy, self-insurance, or otherwise, for the benefit of a physician, dentist, or other health care practitioner in settlement of or in satisfaction in whole or in part of a claim or a judgment against such physician, dentist, or other health care practitioner for medical malpractice, must report information as set forth in paragraph (b) of this section to the NPDB and to the appropriate State licensing board(s) in the State in which the act or omission upon which the medical malpractice claim was based. For purposes of this section, the waiver of an outstanding debt is not construed as a ''payment'' and is not required to be reported.

(b) What information must be reported. Entities described in paragraph (a) of this section must report the following information:

(1) With respect to the physician, dentist, or other health care practitioner for whose benefit the payment is made:

(i) Name,

(ii) Work address,

(iii) Home address, if known,

(iv) Social Security Number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note),

(v) Date of birth,

(vi) Name of each professional school attended and year of graduation,

(vii) For each professional license: the license number, the field of licensure, and the name of the State or Territory in which the license is held,

(viii) Drug Enforcement Administration registration number, if known,

(ix) Name of each hospital with which he or she is affiliated, if known;

(2) With respect to the reporting entity:

(i) Name and address of the entity making the payment,

(ii) Name, title, and telephone number of the responsible official submitting the report on behalf of the entity, and

(iii) Relationship of the reporting entity to the physician, dentist, or other health care practitioner for whose benefit the payment is made;

(3) With respect to the judgment or settlement resulting in the payment:

(i) Where an action or claim has been filed with an adjudicative body, identification of the adjudicative body and the case number,

(ii) Date or dates on which the act(s) or omission(s) which gave rise to the action or claim occurred,

(iii) Date of judgment or settlement,

(iv) Amount paid, date of payment, and whether payment is for a judgment or a settlement,

(v) Description and amount of judgment or settlement and any conditions attached thereto, including terms of payment,

(vi) A description of the acts or omissions and injuries or illnesses upon which the action or claim was based,

(vii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary, and

(viii) Other information as required by the Secretary from time to time after publication in the **Federal Register** and after an opportunity for public comment.

(c) Sanctions. Any entity that fails to report information on a payment required to be reported under this section is subject to a civil money penalty not to exceed the amount specified at 42 CFR 1003.103(c).

(d) Interpretation of information. A payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred.

§ 60.8 Reporting licensure actions taken by Boards of Medical Examiners.

(a) What actions must be reported. Each Board of Medical Examiners must report to the NPDB any action based on reasons relating to a physician's or dentist's professional competence or professional conduct:

(1) Which revokes or suspends (or otherwise restricts) a physician's or dentist's license,

(2) Which censures, reprimands, or places on probation a physician or dentist, or

(3) Under which a physician's or dentist's license is surrendered.

(b) Information that must be reported. The Board must report the following information for each action:

(1) The physician's or dentist's name,

(2) The physician's or dentist's work address,

(3) The physician's or dentist's home address, if known,

(4) The physician's or dentist's Social Security number or Individual Tax Identification Number (ITIN), if known, and if obtained in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note),

(5) The physician's or dentist's date of birth,

(6) Name of each professional school attended by the physician or dentist and year of graduation,

(7) For each professional license, the physician's or dentist's license number, the field of licensure and the name of the State or Territory in which the license is held,

(8) The physician's or dentist's Drug Enforcement Administration registration number, if known,

(9) A description of the acts or omissions or other reasons for the action taken,

(10) A description of the Board action, the date the action was taken, its effective date and duration,

(11) Classification of the action in accordance with a reporting code adopted by the Secretary, and

(12) Other information as required by the Secretary from time to time after publication in the **Federal Register** and after an opportunity for public comment.

(c) Sanctions. If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board has failed to submit a report as required by this section, the Secretary will designate another qualified entity for the reporting of information under § 60.12.

§ 60.9 Reporting licensure and certification actions taken by States.

(a) What actions must be reported. Each State is required to adopt a system of reporting to the NPDB actions, as listed below, which are taken against a health care practitioner, physician, dentist, health care entity, provider, or supplier (all as defined in § 60.3). The actions taken must be as a result of formal proceedings (as defined in § 60.3). The actions which must be reported are:

(1) Any adverse action taken by the licensing or certification authority of the State as a result of a formal proceeding, including revocation or suspension of a license, or certification agreement or contract for participation in a State health care program (and the length of any such suspension), reprimand, censure, or probation;

(2) Any dismissal or closure of the formal proceeding by reason of the health care practitioner, physician, dentist, health care entity, provider, or supplier surrendering the license or certification agreement or contract for participation in a State health care program, or leaving the State or jurisdiction;

(3) Any other loss of license or loss of the certification agreement or contract for participation in a State health care program, or the right to apply for, or renew, a license or certification agreement or contract of the health care practitioner, physician, dentist, health care entity, provider or supplier, whether by operation of law, voluntary surrender, nonrenewal (excluding nonrenewals due to nonpayment of fees, retirement, or change to inactive status), or otherwise.

(4) Any negative action or finding by such authority, organization, or entity regarding the health care practitioner, physician, dentist, health care entity, provider, or supplier.

(b) What information must be reported. Each State must report the following information (not otherwise reported under § 60.8):

(1) If the subject is an individual, personal identifiers, including:

(i) Name;

(ii) Social Security Number or ITIN, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note);

(iii) Home address or address of record;

(iv) Sex; and

(v) Date of birth.

(2) If the subject is an individual, employment or professional identifiers, including:

(i) Organization name and type;

(ii) Occupation and specialty, if applicable;

(iii) National Provider Identifier (NPI);

(iv) Name of each professional school attended and year of graduation; and

(v) With respect to the professional license (including professional certification and registration) on which the reported action was taken, the license number, the field of licensure, and the name of the State or Territory in which the license is held.

(3) If the subject is an organization, identifiers, including:

(i) Name;

(ii) Business address;

(iii) Federal Employer Identification Number (FEIN), or Social Security Number when used by the subject as a Taxpayer Identification Number (TIN);

(iv) The NPI;

(v) Type of organization; and

(vi) With respect to the license (including certification and registration) on which the reported action was taken, the license and the name of the State or Territory in which the license is held.

(4) For all subjects:

(i) A narrative description of the acts or omissions and injuries upon which the reported action was based;

(ii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary;

(iii) Classification of the action taken in accordance with a reporting code adopted by the Secretary, and the amount of any monetary penalty resulting from the reported action;

(iv) The date the action was taken, its effective date and duration;

(v) Name of the agency taking the action;

(vi) Name and address of the reporting entity; and

(vii) The name, title and telephone number of the responsible official submitting the report on behalf of the reporting entity.

(c) What information may be reported, if known. Reporting entities described in paragraph (a) of this section may voluntarily report, if known, the following information:

(1) If the subject is an individual, personal identifiers, including:

(i) Other name(s) used;

(ii) Other address;

(iii) FEIN, when used by the individual as a TIN; and

(iv) If deceased, date of death.

(2) If the subject is an individual, employment or professional identifiers, including:

(i) Other State professional license number(s), field(s) of licensure, and the name(s) of the State or Territory in which the license is held;

(ii) Other numbers assigned by Federal or State agencies, including, but not limited to Drug Enforcement Administration (DEA) registration number(s), Unique Physician Identification Number(s) (UPIN), and Medicaid and Medicare provider number(s);

(iii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(iv) Nature of the subject's relationship to each associated or affiliated health care entity.

(3) If the subject is an organization, identifiers, including:

(i) Other name(s) used;

(ii) Other address(es) used;

(iii) Other FEIN(s) or Social Security Number(s) used;

(iv) Other NPI(s) used;

(v) Other State license number(s) and the name(s) of the State or Territory in which the license is held;

(vi) Other numbers assigned by Federal or State agencies, including, but not limited to Drug Enforcement Administration (DEA) registration

number(s), Clinical Laboratory Improvement Act (CLIA) number(s), Food and Drug Administration (FDA) number(s), and Medicaid and Medicare provider number(s);

(vii) Names and titles of principal officers and owners;

(viii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(ix) Nature of the subject's relationship to each associated or affiliated health care entity.

(4) For all subjects:

(i) Whether the subject will be automatically reinstated.

(ii) The date of appeal, if any.

(d) Access to documents. Each State must provide the Secretary (or an entity designated by the Secretary) with access to the documents underlying the actions described in paragraphs (a)(1) through (4) of this section, as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations for the purpose of carrying out section 1921.

(e) Sanctions for failure to report. The Secretary will provide for a publication of a public report that identifies failures to report information on adverse actions as required to be reported under this section.

§ 60.10 Reporting Federal licensure and certification actions.

(a) What actions must be reported. Federal licensing and certification agencies must report to the NPDB the following final adverse actions that are taken against a health care practitioner, physician, dentist, provider, or supplier (regardless of whether the final adverse action is the subject of a pending appeal):

(1) Formal or official actions, such as revocation or suspension of a license or certification agreement or contract for participation in Federal health care programs (and the length of any such suspension), reprimand, censure or probation,

(2) Any dismissal or closure of the proceedings by reason of the health care practitioner, physician, dentist, provider, or supplier surrendering their license or certification agreement or contract for participation in Federal health care programs, or leaving the State or jurisdiction,

(3) Any other loss of the license or loss of the certification agreement or contract for participation in Federal health care programs, or the right to apply for, or renew, a license or certification agreement or contract of the health care practitioner, physician, dentist, provider, or supplier, whether by operation of law, voluntary surrender, nonrenewal (excluding nonrenewals due to nonpayment of fees, retirement, or change to inactive status), or otherwise, and

(4) Any other negative action or finding by such Federal agency that is publicly available information.

(b) What information must be reported. Each Federal agency described in paragraph (a) must report the following information:

(1) If the subject is an individual, personal identifiers, including:

(i) Name;

(ii) Social Security Number or ITIN;

(iii) Home address or address of record;

(iv) Sex; and

(v) Date of birth.

(2) If the subject is an individual, employment or professional identifiers, including:

(i) Organization name and type;

(ii) Occupation and specialty, if applicable;

(iii) National Provider Identifier (NPI);

(iv) Name of each professional school attended and year of graduation; and

(v) With respect to the State professional license (including professional certification and registration) on which the reported action was taken, the license number, the field of licensure, and the name of the State or Territory in which the license is held.

(3) If the subject is an organization, identifiers, including:

(i) Name;

(ii) Business address;

(iii) Federal Employer Identification Number (FEIN), or Social Security Number (or ITIN) when used by the subject as a Taxpayer Identification Number (TIN);

(iv) The NPI;

(v) Type of organization; and

(vi) With respect to the State license (including certification and registration) on which the reported action was taken, the license and the name of the State or Territory in which the license is held.

(4) For all subjects:

(i) A narrative description of the acts or omissions and injuries upon which the reported action was based;

(ii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary;

(iii) Classification of the action taken in accordance with a reporting code adopted by the Secretary, and the amount of any monetary penalty resulting from the reported action;

(iv) The date the action was taken, its effective date and duration;

(v) Name of the agency taking the action;

(vi) Name and address of the reporting entity; and

(vii) The name, title, and telephone number of the responsible official submitting the report on behalf of the reporting entity.

(c) What information may be reported, if known. Reporting entities described in paragraph (a) of this section may voluntarily report, if known, the following information:

(1) If the subject is an individual, personal identifiers, including:

(i) Other name(s) used;

(ii) Other address;

(iii) FEIN, when used by the individual as a TIN; and

(iv) If deceased, date of death.

(2) If the subject is an individual, employment or professional identifiers, including:

(i) Other State professional license number(s), field(s) of licensure, and the name(s) of the State or Territory in which the license is held;

(ii) Other numbers assigned by Federal or State agencies, including, but not limited to Drug Enforcement Administration (DEA) registration number(s), Unique Physician Identification Number(s) (UPIN), and Medicaid and Medicare provider number(s);

(iii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(iv) Nature of the subject's relationship to each associated or affiliated health care entity.

(3) If the subject is an organization, identifiers, including:

(i) Other name(s) used;

(ii) Other address(es) used;

(iii) Other FEIN(s) or Social Security Number(s) used;

(iv) Other NPI(s) used;

(v) Other State license number(s) and the name(s) of the State or Territory in which the license is held;

(vi) Other numbers assigned by Federal or State agencies, including, but not limited to Drug Enforcement Administration (DEA) registration number(s), Clinical Laboratory Improvement Act (CLIA) number(s), Food and Drug Administration (FDA) number(s), and Medicaid and Medicare provider number(s);

(vii) Names and titles of principal officers and owners;

(viii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(ix) Nature of the subject's relationship to each associated or affiliated health care entity.

(4) For all subjects:

(i) Whether the subject will be automatically reinstated.

(ii) The date of appeal, if any.

(d) Sanctions for failure to report. The Secretary will provide for a publication

of a public report that identifies those agencies that have failed to report information on adverse actions as required to be reported under this section.

§ 60.11 Reporting negative actions or findings taken by peer review organizations or private accreditation entities.

(a) What actions must be reported. Peer review organizations and private accreditation entities are required to report any negative actions or findings (as defined in § 60.3) which are taken against a health care practitioner, physician, dentist, health care entity, provider, or supplier to the NPDB and provide a copy to the appropriate State licensing or certification agency. The health care practitioner, physician, dentist, health care entity, provider, or supplier must be licensed or otherwise authorized by the State to provide health care services. The actions taken must be as a result of formal proceedings (as defined in § 60.3).

(b) What information must be reported. Each peer review organization and private accreditation entity must report the information as required in § 60.9(b).

(c) What information may be reported, if known: Each peer review organization and private accreditation entity should report, if known, the information as described in § 60.9(c).

(d) Access to documents. Each peer review organization and private accreditation entity must provide the Secretary (or an entity designated by the Secretary) with access to the documents underlying the actions described in this section as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations for the purpose of carrying out section 1921.

§ 60.12 Reporting adverse actions taken against clinical privileges.

(a) Reporting by health care entities to the NPDB.

(1) Actions that must be reported and to whom the report must be made. Each health care entity must report to the NPDB and provide a copy of the report to the Board of Medical Examiners in the State in which the health care entity is located the following actions:

(i) Any professional review action that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days;

(ii) Acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist:

(A) While the physician or dentist is under investigation by the health care entity relating to possible incompetence or improper professional conduct, or

(B) In return for not conducting such an investigation or proceeding; or

(iii) In the case of a health care entity which is a professional society, when it takes a professional review action concerning a physician or dentist.

(2) Voluntary reporting on other health care practitioners. A health care entity may report to the NPDB information as described in paragraph (a)(3) of this section concerning actions described in paragraph (a)(1) in this section with respect to other health care practitioners.

(3) What information must be reported. The health care entity must report the following information concerning actions described in paragraph (a)(1) of this section with respect to a physician or dentist:

(i) Name,

(ii) Work address,

(iii) Home address, if known,

(iv) Social Security Number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974,

(v) Date of birth,

(vi) Name of each professional school attended and year of graduation,

(vii) For each professional license: the license number, the field of licensure, and the name of the State or Territory in which the license is held,

(viii) Drug Enforcement Administration registration number, if known,

(ix) A description of the acts or omissions or other reasons for privilege loss, or, if known, for surrender,

(x) Action taken, date the action was taken, and effective date of the action, and

(xi) Other information as required by the Secretary from time to time after publication in the **Federal Register** and after an opportunity for public comment.

(b) Reporting by the Board of Medical Examiners to the NPDB. Each Board must report any known instances of a health care entity's failure to report information as required under paragraph (a)(1) of this section. In addition, each Board of Medical Examiners must simultaneously report this information to the appropriate State licensing board in the State in which the health care entity is located, if the Board of Medical Examiners is not such licensing board.

(c) Sanctions.

(1) Health care entities. If the Secretary has reason to believe that a health care entity has substantially failed to report information in accordance with this section, the Secretary will conduct an investigation. If the investigation shows that the health care entity has not complied with this section, the Secretary will provide the entity with a written notice describing the noncompliance, giving the health care entity an opportunity to correct the noncompliance, and stating that the entity may request, within 30 days after receipt of such notice, a hearing with respect to the noncompliance. The request for a hearing must contain a statement of the material factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC, metropolitan area. The Secretary will deny a hearing if:

(i) The request for a hearing is untimely,

(ii) The health care entity does not provide a statement of material factual issues in dispute, or

(iii) The statement of factual issues in dispute is frivolous or inconsequential. In the event that the Secretary denies a hearing, the Secretary will send a written denial to the health care entity setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing the entity is found to be in noncompliance, the Secretary will publish the name of the health care entity in the **Federal Register**. In such case, the immunity protections provided under section 411(a) of the Act will not apply to the health care entity for professional review activities that occur during the three-year period beginning 30 days after the date of publication of the entity's name in the **Federal Register**.

(2) Board of Medical Examiners. If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with paragraph (b) of this section, the Secretary will designate another qualified entity for the reporting of this information.

§ 60.13 Reporting Federal or State criminal convictions related to the delivery of a health care item or service.

(a) Who must report. Federal and State prosecutors must report criminal convictions against health care practitioners, physicians, dentists, providers, and suppliers related to the delivery of a health care item or service (regardless of whether the conviction is the subject of a pending appeal).

(b) Entities described in paragraph (a) of this section must report the following information:

(1) If the subject is an individual, personal identifiers, including:

(i) Name;

(ii) Social Security Number (or ITIN) (States must report this information, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974);

(iii) Home address or address of record;

(iv) Sex; and

(v) Date of birth.

(2) If the subject is an individual, that individual's employment or professional identifiers, including:

(i) Organization name and type;

(ii) Occupation and specialty, if applicable; and

(iii) National Provider Identifier (NPI).

(3) If the subject is an organization, identifiers, including:

(i) Name;

(ii) Business address;

(iii) Federal Employer Number (FEIN), or Social Security Number (or ITIN) when used by the subject as a Taxpayer Identification Number (TIN);

(iv) The NPI; and

(v) Type of organization.

(4) For all subjects:

(i) A narrative description of the acts or omissions and injuries upon which the reported action was based;

(ii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary;

(iii) Name and location of court or judicial venue in which the action was taken;

(iv) Docket or court file number;

(v) Type of action taken;

(vi) Statutory offense(s) and count(s);

(vii) Name of primary prosecuting agency (or the plaintiff in civil actions);

(viii) Date of sentence or judgment;

(ix) Length of incarceration, detention, probation, community service, or suspended sentence;

(x) Amounts of any monetary judgment, penalty, fine, assessment, or restitution;

(xi) Other sentence, judgment, or orders;

(xii) If the action is on appeal;

(xiii) Name and address of the reporting entity; and

(xiv) The name, title, and telephone number of the responsible official submitting the report on behalf of the reporting entity.

(c) Entities described in paragraph (a) of this section and each State should report, if known, the following information:

(1) If the subject is an individual, personal identifiers, including:

(i) Other name(s) used;

(ii) Other address; and

(iii) FEIN, when used by the individual as a TIN.

(2) If the subject is an individual, that individual's employment or professional identifiers, including:

(i) State professional license (including professional certification and registration) number(s), field(s) of licensure, and the name(s) of the State or Territory in which the license is held;

(ii) Other numbers assigned by Federal or State agencies, to include, but not limited to Drug Enforcement Administration (DEA) registration number(s), Unique Physician Identification Number(s) (UPIN), and Medicaid and Medicare provider number(s);

(iii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(iv) Nature of the subject's relationship to each associated or affiliated health care entity.

(3) If the subject is an organization, identifiers, including:

(i) Other name(s) used;

(ii) Other address(es) used;

(iii) Other FEIN(s) or Social Security Numbers(s) (or ITINs) used;

(iv) Other NPI(s) used;

(v) State license (including certification and registration) number(s) and the name(s) of the State or Territory in which the license is held;

(vi) Other numbers assigned by Federal or State agencies, to include, but not limited to Drug Enforcement Administration (DEA) registration number(s), Clinical Laboratory Improvement Act (CLIA) number(s), Food and Drug Administration (FDA) number(s), and Medicaid and Medicare provider number(s);

(vii) Names and titles of principal officers and owners;

(viii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(ix) Nature of the subject's relationship to each associated or affiliated health care entity.

(4) For all subjects:

(i) Prosecuting agency's case number;

(ii) Investigative agencies involved;

(iii) Investigative agencies case or file number(s); and

(iv) The date of appeal, if any.

(d) Access to documents. Each State must provide the Secretary (or an entity designated by the Secretary) with access to the documents underlying the actions described in paragraphs (a)(1) through (4) of this section, as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations for the purpose of carrying out section 1921.

(e) Sanctions for failure to report. The Secretary will provide for publication of a public report that identifies those agencies that have failed to report information on criminal convictions as required to be reported under this section.

§ 60.14 Reporting civil judgments related to the delivery of a health care item or service.

(a) Who must report. Federal and State attorneys and health plans must report civil judgments against health care practitioners, physicians, dentists, providers, or suppliers related to the delivery of a health care item or service (regardless of whether the civil judgment is the subject of a pending appeal). If a Government agency is party to a multi-claimant civil judgment, it must assume the responsibility for reporting the entire action, including all amounts awarded to all the claimants, both public and private. If there is no Government agency as a party, but there are multiple health plans as claimants, the health plan which receives the largest award must be responsible for reporting the total action for all parties.

(b) What information must be reported. Entities described in paragraph (a) of this section must report the information as required in § 60.13(b).

(c) What information may be reported, if known. Entities described in paragraph (a) of this section should report, if known the information as described in § 60.13(c).

(d) Access to documents. Each State must provide the Secretary (or an entity designated by the Secretary) with access to the documents underlying the actions described in paragraphs (a)(1) through (4) of this section, as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations for the purpose of carrying out section 1921.

(e) Sanctions for failure to report. Any health plan that fails to report information on a civil judgment required to be reported under this section will be subject to a civil money penalty (CMP) of not more than $25,000 for each such adverse action not reported. Such penalty will be imposed and collected in the same manner as CMPs under subsection (a) of section 1128A of the Social Security Act. The Secretary will provide for publication of a public report that identifies those Government agencies that have failed to report information on civil judgments as required to be reported under this section.

§ 60.15 Reporting exclusions from participation in Federal or State health care programs.

(a) Who must report. Federal Government agencies and State law and fraud enforcement agencies must report health care practitioners, physicians, dentists, providers, or suppliers excluded from participating in Federal or State health care programs, including exclusions that were made in a matter in which there was also a settlement that is not reported because no findings or admissions of liability have been made (regardless of whether the exclusion is the subject of a pending appeal).

(b) What information must be reported. Entities described in paragraph (a) of this section must report the following information:

(1) If the subject is an individual, personal identifiers, including:

(i) Name;

(ii) Social Security Number (or ITIN) (State law and fraud enforcement agencies must report this information if known, and if obtained in accordance with section 7 of the Privacy Act of 1974);

(iii) Home address or address of record;

(iv) Sex; and

(v) Date of birth.

(2) If the subject is an individual, that individual's employment or professional identifiers, including:

(i) Organization name and type;

(ii) Occupation and specialty, if applicable; and

(iii) National Provider Identifier (NPI).

(3) If the subject is an organization, identifiers, including:

(i) Name;

(ii) Business address;

(iii) Federal Employer Identification Number (FEIN) or Social Security Number (or ITIN) when used by the subject as a Taxpayer Identification Number (TIN);

(iv) The NPI; and

(v) Type of organization.

(4) For all subjects:

(i) A narrative description of the acts or omissions and injuries upon which the reported action was based;

(ii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary;

(iii) Classification of the action taken in accordance with a reporting code adopted by the Secretary, and the amount of any monetary penalty resulting from the reported action;

(iv) The date the action was taken, its effective date and duration;

(v) If the action is on appeal;

(vi) Name of the agency taking the action;

(vii) Name and address of the reporting entity; and

(viii) The name, title, and telephone number of the responsible official submitting the report on behalf of the reporting entity.

(c) Entities described in paragraph (a) of this section should report, if known, the following information:

(1) If the subject is an individual, personal identifiers, including:

(i) Other name(s) used;

(ii) Other address;

(iii) FEIN, when used by the individual as a TIN;

(iv) Name of each professional school attended and year of graduation; and

(v) If deceased, date of death.

(2) If the subject is an individual, that individual's employment or professional identifiers, including:

(i) State professional license (including professional registration and certification) number(s), field(s) of licensure, and the name(s) of the State or Territory in which the license is held;

(ii) Other numbers assigned by Federal or State agencies, to include, but not limited to Drug Enforcement Administration (DEA) registration number(s), Unique Physician Identification Number(s) (UPIN), and Medicaid and Medicare provider number(s);

(iii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(iv) Nature of the subject's relationship to each associated or affiliated health care entity.

(3) If the subject is an organization, identifiers, including:

(i) Other name(s) used;

(ii) Other address(es) used;

(iii) Other FEIN(s) or Social Security Numbers(s) (or ITINs) used;

(iv) Other NPI(s) used;

(v) State license (including registration and certification) number(s) and the name(s) of the State or territory in which the license is held;

(vi) Other numbers assigned by Federal or State agencies, to include, but not limited to Drug Enforcement Administration (DEA) registration number(s), Clinical Laboratory Improvement Act (CLIA) number(s), Food and Drug Administration (FDA) number(s), and Medicaid and Medicare provider number(s);

(vii) Names and titles of principal officers and owners;

(viii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(ix) Nature of the subject's relationship to each associated or affiliated health care entity.

(4) For all subjects:

(i) If the subject will be automatically reinstated; and

(ii) The date of appeal, if any.

(d) Access to documents. Each State must provide the Secretary (or an entity designated by the Secretary) with access to the documents underlying the actions described in paragraphs (a) (1) through (4) of this section, as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations for the purpose of carrying out section 1921.

(e) Sanctions for failure to report. The Secretary will provide for publication of a public report that identifies those Government agencies that have failed to report information on exclusions or debarments as required to be reported under this section.

§ 60.16 Reporting other adjudicated actions or decisions.

(a) Who must report. Federal Government agencies, State law or fraud enforcement agencies, and health plans must report other adjudicated actions or decisions as defined in § 60.3 related to the delivery, payment or provision of a health care item or service against health care practitioners, physicians, dentists, providers, and suppliers (regardless of whether the other adjudicated action or decision is subject to a pending appeal).

(b) Entities described in paragraph (a) of this section must report the information as required in § 60.15(b).

(c) Entities described in paragraph (a) of this section should report, if known, the information as described in § 60.15(c).

(d) Access to documents. Each State must provide the Secretary (or an entity designated by the Secretary) with access to the documents underlying the actions described in paragraphs (a) (1) through (4) of this section, as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations for the purpose of carrying out section 1921.

(e) Sanctions for failure to report. Any health plan that fails to report information on another adjudicated action or decision required to be reported under this section will be subject to a civil money penalty (CMP) of not more than $25,000 for each such action not reported. Such penalty will be imposed and collected in the same manner as CMPs under subsection (a) of section 1128A of the Social Security Act. The Secretary will provide for publication of a public report that identifies those Government agencies that have failed to report information on other adjudicated actions as required to be reported under this section.

Subpart C—Disclosure of Information by the National Practitioner Data Bank

§ 60.17 Information which hospitals must request from the National Practitioner Data Bank.

(a) When information must be requested. Each hospital, either directly or through an authorized agent, must request information from the NPDB concerning a physician, dentist, or other health care practitioner, as follows:

(1) At the time a physician, dentist, or other health care practitioner, applies for a position on its medical staff (courtesy or otherwise), or for clinical privileges at the hospital; and

(2) Every two years concerning any physician, dentist, or other health care practitioner, who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital.

(b) Failure to request information. Any hospital which does not request the information as required in paragraph (a) of this section is presumed to have knowledge of any information reported to the NPDB concerning this physician, dentist, or other health care practitioner.

(c) Reliance on the obtained information. Each hospital may rely upon the information provided by the NPDB to the hospital. A hospital shall not be held liable for this reliance unless the hospital has knowledge that the information provided was false.

§ 60.18 Requesting information from the National Practitioner Data Bank.

(a) Who may request information and what information may be available. Information in the NPDB will be available, upon request, to the persons or entities, or their authorized agents, as described below:

(1) Information reported under §§ 60.7, 60.8, and 60.12 is available to:

(i) A hospital that requests information concerning a physician, dentist, or other health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital;

(ii) A physician, dentist, or other health care practitioner who requests information concerning himself or herself;

(iii) A State Medical Board of Examiners or other State authority that licenses physicians, dentists, or other health care practitioners;

(iv) A health care entity which has entered or may be entering into an employment or affiliation relationship with a physician, dentist, or other health care practitioner, or to which the physician, dentist, or other health care practitioner has applied for clinical privileges or appointment to the medical staff;

(v) An attorney, or individual representing himself or herself, who has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist, or other health care practitioner who is also named in the action or claim. This information will be disclosed only upon the submission of evidence that the hospital failed to request information from the NPDB, as required by § 60.17(a), and may be used solely with respect to litigation resulting from the action or claim against the hospital;

(vi) A health care entity with respect to professional review activity; and

(vii) A person or entity requesting statistical information, in a form which does not permit the identification of any individual or entity.

(2) Information reported under §§ 60.9, 60.10, 60.11, 60.13, 60.14, 60.15, and 60.16 is available to the agencies, authorities, and officials listed below that request information on licensure or certification actions, any other negative actions or findings, or final adverse actions concerning an individual practitioner, physician, dentist, health care entity, provider, or supplier. These agencies, authorities, and officials may obtain data for the purposes of determining the fitness of individuals to provide health care services, protecting the health and safety of individuals receiving health care through programs administered by the requesting agency, and protecting the fiscal integrity of these programs.

(i) Agencies administering (including those providing payment for services) Federal health care programs, including private entities administering such programs under contract;

(ii) State licensing or certification agencies and Federal agencies responsible for the licensing and certification of health care practitioners, physicians, dentists, providers, or suppliers;

(iii) State agencies administering or supervising the administration of State health care programs (as defined in 42 U.S.C. 1128(h));

(iv) State law or fraud enforcement agencies;

(v) Law enforcement officials and agencies such as:

(A) United States Attorney General;

(B) United States Chief Postal Inspector;

(C) United States Inspectors General;

(D) United States Attorneys;

(E) United States Comptroller General;

(F) United States Drug Enforcement Administration;

(G) United States Nuclear Regulatory Commission; or

(H) Federal Bureau of Investigation;

(vi) Utilization and quality control peer review organizations described in part B of title XI and to appropriate entities with contracts under section 1154(a)(4)(C) of the Social Security Act with respect to eligible organizations reviewed under the contracts, but only with respect to information provided pursuant to §§ 60.9 and 60.11, as well as information provided pursuant to §§ 60.13, 60.14, 60.15, and 60.16 by Federal agencies and health plans;

(vii) Hospitals and other health care entities (as defined in section 431 of the Health Care Quality Improvement Act of 1986), with respect to physicians or other licensed health care practitioners who have entered (or may be entering) into employment or affiliation relationships with, or have applied for clinical privileges or appointments to the medical staff of such hospitals or other health care entities, but only with respect to information provided pursuant to §§ 60.9 and 60.11, as well as information provided pursuant to §§ 60.13, 60.14, 60.15, and 60.16 by Federal agencies and health plans;

(viii) health plans;

and

(ix) A health care practitioner, physician, dentist, health care entity, provider, or supplier who requests information concerning himself, herself, or itself; and

(x) A person or entity requesting statistical information, in a form which does not permit the identification of any individual or entity. (For example, researchers may use statistical information to identify the total number of nurses with adverse licensure actions in a specific State. Similarly, researchers may use statistical information to identify the total number of health care entities denied accreditation.)

(b) Procedures for obtaining National Practitioner Data Bank information. Persons and entities may obtain information from the NPDB by submitting a request in such form and manner as the Secretary may prescribe. These requests are subject to fees as described in § 60.19.

§ 60.19 Fees applicable to requests for information.

(a) Policy on Fees. The fees described in this section apply to all requests for information from the NPDB. The amount of such fees will be sufficient to recover the full costs of operating the NPDB. The actual fees will be announced by the Secretary in periodic notices in the **Federal Register.** However, for purposes of verification

and dispute resolution at the time the report is accepted, the NPDB will provide a copy—at the time a report has been submitted, automatically, without a request and free of charge—of the record to the health care practitioner, physician, dentist, entity, provider, or supplier who is the subject of the report and to the reporter.

(b) Criteria for determining the fee. The amount of each fee will be determined based on the following criteria:

(1) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;

(2) Physical overhead, consulting, and other indirect costs (including materials and supplies, utilities, insurance, travel, and rent and depreciation on land, buildings, and equipment);

(3) Agency management and supervisory costs;

(4) Costs of enforcement, research, and establishment of regulations and guidance;

(5) Use of electronic data processing equipment to collect and maintain information—the actual cost of the service, including computer search time, runs and printouts; and

(6) Any other direct or indirect costs related to the provision of services.

(c) Assessing and collecting fees. The Secretary will announce through notice in the **Federal Register** from time to time the methods of payment of NPDB fees. In determining these methods, the Secretary will consider efficiency, effectiveness, and convenience for the NPDB users and the Department. Methods may include: credit card electronic fund transfer, and other methods of electronic payment.

§ 60.20 Confidentiality of National Practitioner Data Bank information.

(a) Limitations on disclosure. Information reported to the NPDB is considered confidential and shall not be disclosed outside the Department of Health and Human Services, except as specified in §§ 60.17, 60.18, and 60.21. Persons and entities receiving information from the NPDB, either directly or from another party, must use it solely with respect to the purpose for which it was provided. Nothing in this section will prevent the disclosure of information by a party from its own files used to create such reports where disclosure is otherwise authorized under applicable State or Federal law.

(b) Penalty for violations. Any person who violates paragraph (a) shall be subject to a civil money penalty of up to $11,000 for each violation. This penalty will be imposed pursuant to procedures at 42 CFR part 1003.

§ 60.21 How to dispute the accuracy of National Practitioner Data Bank information.

(a) Who may dispute the NPDB information. The NPDB will routinely mail or transmit electronically to the subject a copy of the report filed in the NPDB. In addition, as indicated in § 60.18(a)(2)(ix), the subject may also request a copy of such report. The subject of the report or a designated representative may dispute the accuracy of a report concerning himself, herself, or itself as set forth in paragraph (b) of this section.

(b) Procedures for disputing a report with the reporting entity.

(1) If the subject disagrees with the reported information, the subject must request in writing that the NPDB enter the report into ''disputed status.''

(2) The NPDB will send the report, with a notation that the report has been placed in ''disputed status,'' to queriers (where identifiable), the reporting entity and the subject of the report.

(3) The subject must attempt to enter into discussion with the reporting entity to resolve the dispute. If the reporting entity revises the information originally submitted to the NPDB, the NPDB will notify the subject and all entities to whom reports have been sent that the original information has been revised. If the reporting entity does not revise the reported information, or does not respond to the subject within 60 days, the subject may request that the Secretary review the report for accuracy. The Secretary will decide whether to correct the report within 30 days of the request. This time frame may be extended for good cause. The subject also may provide a statement to the NPDB, either directly or through a designated representative, that will permanently append the report.

(c) Procedures for requesting a Secretarial review.

(1) The subject must request, in writing, that the Secretary review the report for accuracy. The subject must return this request to the NPDB along with appropriate materials that support the subject's position. The Secretary will only review the accuracy of the reported information, and will not consider the merits or appropriateness of the action or the due process that the subject received.

(2) After the review, if the Secretary:

(i) Concludes that the information is accurate and reportable to the NPDB, the Secretary will inform the subject and the NPDB of the determination. The Secretary will include a brief statement (Secretarial Statement) in the report that describes the basis for the decision. The report will be removed from ''disputed status.'' The NPDB will distribute the corrected report and statement(s) to previous queriers (where identifiable), the reporting entity and the subject of the report.

(ii) Concludes that the information contained in the report is inaccurate, the Secretary will inform the subject of the determination and direct the NPDB or the reporting entity to revise the report. The Secretary will include a brief statement (Secretarial Statement) in the report describing the findings. The NPDB will distribute the corrected report and statement(s) to previous queriers (where identifiable), the reporting entity and the subject of the report.

(iii) Determines that the disputed issues are outside the scope of the Department's review, the Secretary will inform the subject and the NPDB of the determination. The Secretary will include a brief statement (Secretarial Statement) in the report describing the findings. The report will be removed from ''disputed status.'' The NPDB will distribute the report and the statement(s) to previous queriers (where identifiable), the reporting entity and the subject of the report.

(iv) Determines that the adverse action was not reportable and therefore should be removed from the NPDB, the Secretary will inform the subject and direct the NPDB to void the report. The NPDB will distribute a notice to previous queriers (where identifiable), the reporting entity and the subject of the report that the report has been voided.

§ 60.22 Immunity.

Individuals, entities or their authorized agents, and the NPDB shall not be held liable in any civil action filed by the subject of a report unless the individual, entity, or authorized agent submitting the report has actual knowledge of the falsity of the information contained in the report.

Title 45—Public Welfare

4. CHAPTER I—DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 61—[REMOVED]

4. Under the authority of 42 U.S.C. 1320a–7e, remove part 61.

[FR Doc. 2012–3014 Filed 2–14–12; 8:45 am]

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